

NO. 87062-4

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

2012 JUL -5 A 10:14

BY RONALD R. CARPENTER

CLERK

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

DOCTOR'S ASSOCIATES, INC.,

Appellant,

v.

WAQAS SALEEMI & FAROOQ SHARYAR,

Respondents.

APPELLANT'S MEMORANDUM OF AUTHORITIES

Petitioner's Supplemental Brief

Gary H. Branfeld
WSBA No. 6537
Attorneys for Appellant

Smith Alling, P.S.
1102 Broadway Plaza, Suite 403
Tacoma, WA 98402
(253) 627-1091

FILED
JUL 05 2012
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

TABLE OF CONTENTS

	<u>Page</u>
I. SUMMARY OF ARGUMENT & FACTS.....	1
II. ARGUMENT.....	5
1. Standard of Review	5
2. Enforcement of Arbitration Agreements is Required	5
3. A Showing of Prejudice Should Not Be Required to Raise Issues on Appeal	10
A. Prejudice From Venue Decision	11
B. Prejudice from Choice of Law	11
1. Errors by Trial Court Not The Same as Errors by Arbitrator	11
2. Structural Error Does Not Require Showing of Prejudice	13
3. Trial Court Lacked Jurisdiction to Enter Judgment	14
4. Prejudice Has Been Shown	17
5. A Party is Never Required to Seek Discretionary Review	17
6. Attorneys Fees	19
III. CONCLUSION	19

APPENDIX –

- 1. Court of Appeals Published Opinion, Docket No. 08-2-11956-0
Date Filed Jan. 24, 2012**
- 2. Franchise Agreement #1878, executed March 2, 2004**
- 3. Franchise Agreement #14570, executed June 14, 2006**
- 4. Franchise Agreement #13913, executed June 21, 2006**
- 5. Pierce County Superior Court - Order on Motion to Determine
Arbitrability, dated Sept. 19, 2008**

TABLE OF AUTHORITIES

Table of Cases

<i>ACF Property Management, Inc. v. Chausse</i> , 69 Wn. App. 913, 850 P.2d 1387, <i>rev. den.</i> 122 Wn. 2d 1019 (1993)	15, 18
<i>AT&T Mobility, LLC v. Concepcion et. ux.</i> , ___ US ___, 131 S.Ct. 1740, 179 L.Ed.2d 742 (April 27, 2011)	7, 8, 11
<i>Barnes v. Logan</i> , 122 F.3d 820 (1997)	11
<i>Barnett v. Hicks</i> , 119 Wn.2d 151, 829 P.2d 1087 (1992)	15
<i>Boyd v. Davis</i> , 127 Wn.2d 256, 897 P.2d 1239 (1995)	12
<i>Buckeye Check Cashing, Inc. v. Cardegna</i> , 546 U.S. 440, 126 S.Ct. 1204, 163 L.Ed.2d 1038 (2006)	6, 12, 17
<i>Coutee v. Barington Capital Group, L.P.</i> , 336 F.3d 1128, 1134–35 (9th Cir.2003)	10, 11
<i>Cummings v. Budget Tank Removal & Environmental Services, LLC</i> , 163 Wn. App. 379, 260 P.3d 220 (2011)	16
<i>DAI v. Casarotto</i> , 517 U.S. 681, 688, 116 S. Ct. 1652, 134 L. Ed.2d 902 (1996)	6
<i>Davidson v. Hensen</i> , 135 Wn.2d 112, 954 P.2d 1327 (1998)	11
<i>Davidson v. Hensen</i> , 85 Wn. App. 187, 933 P.2d 1050 (1997), <i>aff'd</i> 135 Wn.2d 112 (1998)	14
<i>Davis v. General Dynamics Land Systems</i> , 152 Wn. App. 715, 718, 217 P.3d 1191, 1192 (2009)	5, 12
<i>DGHI Enters. v. Pac. Cities, Inc.</i> , 137 Wn.2d 933, 949, 977 P.2d 1231 (1999)	18
<i>Expert Drywall, Inc. v. Ellis-Don Const., Inc.</i> , 86 Wn. App. 884, 939 P.2d 1258 (1997)	16

<i>In re Det. of Petersen</i> , 138 Wn.2d 70, 88-90, 980 P.2d 1204 (1999)	17
<i>International Union Of Operating Engineers Local 286, v. Port Of Seattle</i> , 164 Wn. App. 307, 264 P.3d 268 (2011)	9
<i>Lincoln v. Transamerica Inv. Corp.</i> , 89 Wn.2d 571, 578, 573 P.2d 1316 (1978)	10
<i>Marassi v. Lau</i> , 71 Wn App. 912, 918, 859 P.2d 605 (1993)	19
<i>McKee v. AT & T Corp.</i> , 164 Wn.2d 372, 383, 191 P. 3d 845, 851 (2008)	5, 8
<i>Moen v. State</i> , 13 Wn. App. 142, 533 P.2d 862 (1975)	16
<i>Morrell v. Wedbush</i> , 143 Wn. App. 473, 178 P.3d 387 (2008).	12
<i>NCR Corp. v. Sac-Co., Inc.</i> , 43 F.3d 1076 (C.A. 6, 1995)	19
<i>Norris v. S.E.C.</i> , 675 F.3d 1349 (C.A. Fed, 2012)	13
<i>PacifiCare Health Systems, Inc. v. Book</i> , 538 U.S. 401, 123 S.Ct. 1531, 155 L.Ed.2d 578 (2003)	7
<i>Rent-A-Center, West, Inc. v. Jackson</i> , __ U.S. __, 130 S. Ct. 2772 (2010)	7
<i>Right-Price Recreation, L.L.C. v. Connells Prairie Cmty. Council</i> , 146 Wn.2d 370, 380, 46 P.3d 789 (2002)	18
<i>Saleemi v. Doctor's Associates</i> , 166 Wn. App. 81, at 91, 269 P.3d 350 (2012)	4, 17
<i>Satomi Owners Ass'n v. Satomi, LLC</i> , 167 Wn.2d 781, 797, 225 P.3d 213, 223 (2009)	5, 12
<i>State v. Britton</i> , 27 Wn.2d 336, 342, 178 P.2d 341 (1947)	14
<i>State v. Levy</i> , 156 Wn.2d 709, 132 P.3d 1076 (2006)	13

<i>Stolt-Nielsen S. A. v. AnimalFeeds Int'l Corp.</i> , 559 U.S. ___, 130 S.Ct. 1758, 176 L.Ed.2d 605 (2010)	6
<i>The Heights at Issaquah Ridge, Owners Ass'n v. Burton Landscape Group, Inc.</i> , 148 Wn. App. 400, 200 P.3d 254 (2009)	9
<i>Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.</i> , 489 U.S. 468, 479, 109 S. Ct. 1248, 103 L. Ed.2d 488 (1989)	6
<i>Wachovia Securities, LLC v. Brand</i> , 671 F.3d 472 (C.A. 4, 2012)	12
<i>Wyandot, Inc. v. Local 227, United Food and Commercial Workers Union</i> , 205 F.3d 922 (C.A. 6, 2000)	13
<i>Woodall v. Avalon Care Center Federal Way, LLC</i> , 155 Wn. App. 919, 231 P.3d 1252 (2010)	8

Statutes, Codes

Federal Arbitration Act, 9 U.S.C. § 2	5, 6
Washington State's Uniform Arbitration Act, Chapter 7.04A RCW	5
RCW 7.04A, et seq.	6
RCW 7.04A.070 (1)	8
RCW 4.84.330	19

Rules and Regulations

RAP 2.3	18
---------	----

I. SUMMARY OF ARGUMENT & FACTS

This case concerns the authority of trial courts, and appellate courts when the case is clearly governed by an arbitration agreement. Here, the trial court applied its judgment rather than the judgment of an arbitrator, when it changed the terms of the arbitration agreement by ordering that the case be submitted to arbitration, under Washington law, in Washington, without a contractual cap on damages. At all times Doctor's Associates ("DAI") objected to this decision

The procedural and substantive facts have all been set before the Court of Appeals in the Brief of Appellant. For the purpose of this appeal it is only necessary to set forth a few of these facts. Doctor's Associates ("DAI") is the franchisor for Subway Sandwich stores. Here the Plaintiffs entered into three separate franchise agreements. All three Franchise Agreements contain an identical dispute resolution paragraph that reads as follows:

10. ARBITRATION OF DISPUTES

a. *Any dispute, controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration.* The arbitration shall be administered by an arbitration agency, such as the American Arbitration Association ("AAA") or the American Dispute Resolution Center, in accordance with its administrative rules including, as applicable, the Commercial Rules of the AAA and under the Expedited Procedures of such rules or under the Optional Rules For

Emergency Measures of Protection of the AAA. Judgment rendered by the Arbitrator may be entered in any court having jurisdiction thereof. The cost of arbitration will be borne equally by the parties. *The parties agree that Bridgeport, Connecticut shall be the site for all hearings held under this Paragraph 10*, and that such hearing shall be before a single arbitrator, not a panel, and neither party shall pursue class claims and/or consolidate the arbitration with any other proceedings to which we are a party. The parties will honor validly served subpoenas, warrants and court orders.

CP 35, CP 51, CP 65 (*Italic added*). (Hereafter the arbitration clauses will be referred to as the “Arbitration Agreements.”)

Plaintiffs objected to having their disputes arbitrated and filed a lawsuit to block arbitration. Plaintiffs asserted that the Arbitration Agreements were unconscionable because of contractual provisions within the Agreements:

- 1) a limitation of damages clause, limiting both parties to \$100,000.00 in damages and other relief (CP 89 (see CP 38, 54, 68 – para 14));
- 2) the venue selection clause agreeing that all arbitration proceedings shall be held in Bridgeport, Connecticut (CP 83 In 2-16 (see CP 35-6, 51-2, 66 – para 10 g.)); and
- 3) a choice of law provision agreeing to apply the laws of Connecticut for interpretation and enforcement of the Agreements (with the agreed exception that Connecticut franchise law is not

applicable). (CP 89 ln 18-24 – CP 90 ln 1-17 (see CP 37, 53, 68 – para 13)).

In response DAI argued that in addressing a motion to enforce an agreement to arbitrate the trial court's authority was limited to determining whether the arbitration clause, in isolation, was enforceable. If the court determined that the arbitration clause was to be enforced, the force and effect of the other terms of the contract, and the contract as a whole, were matters solely for the arbitrator's consideration. CP 211, ln 5-15.

DAI's Motion to Compel Arbitration was heard and decided on September 19, 2008. The trial court ordered Plaintiffs to submit to arbitration. However, the court ruled that the Arbitration Agreements' provision for venue in Connecticut were unenforceable. The trial court further held, without explanation, that the arbitration shall be "...in Washington under Washington law, with no limitation on damages." CP 217-8. RP (Sept 19, 2008) pg 17, ln 6-22. Although the court ordered that the Plaintiffs were required to proceed to arbitration, the court did not award DAI its reasonable attorney fees and costs incurred in enforcing the arbitration clause.

A Motion for Discretionary Review from the trial court's decision was not filed. Instead DAI proceeded with the arbitration, as ordered by the trial court. The arbitrator awarded the plaintiffs \$230,000.00 in

compensatory damages, \$161,536.00 for attorney's fees and \$32,837.96 for costs. CP 222.

DAI moved to vacate the arbitration award because, the arbitration award was improperly determined based upon Washington law, conducted in the State of Washington, and improperly exceeded the limitation of damages set forth in the Agreements. CP 234, ln 21-4 – CP 235, ln 1-2. In the supporting memorandum DAI again asserted that the trial court exceeded its authority when it decided issues that were beyond the narrow issue of enforceability of the arbitration clause. CP 298- 301 ln.7.

On February 12, 2010, the court entered an order confirming the arbitration award. DAI filed a Notice of Appeal on February 17, 2010. On March 19, 2010 the court entered a judgment against DAI for attorney fees in the amount of \$6,453.33. DAI filed an Amended Notice of Appeal pertinent thereto on March 24, 2010.

The Court of Appeals held that DAI could have filed a Motion for Discretionary Review, but properly concluded that DAI was not required to file for Discretionary Review. *Saleemi v. Doctor's Associates*, 166 Wn. App. 81, 91, 269 P.3d 350 (2012). The Court of Appeals then held: "DAI is not entitled to relief because it fails to establish any possible prejudice." *Id*, at 93-94. This decision raised the issue of whether a party must always seek discretionary review or be held to a higher standard to

prevail on a subsequent appeal. The Court of Appeals did not address the question of what the standard of review would have been if a motion for discretionary review had been filed and denied. Nor did the Court of Appeals follow State and Federal law governing the authority of a trial court in dealing with a case clearly subject to arbitration.

II. ARGUMENT

1. *Standard of Review*

Arbitrability of a dispute is a question of law that is reviewed *de novo*. *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 797, 225 P.3d 213 (2009); *Davis v. General Dynamics Land Systems*, 152 Wn. App. 715, 718, 217 P.3d 1191, 1192 (2009). See also *McKee v. AT & T Corp.*, 164 Wn.2d 372, 383, 191 P. 3d 845 (2008) (citations omitted). Therefore, *de novo* is the correct standard of review here.

2. *Enforcement of Arbitration Agreements is Required.*

The validity of the arbitration clauses in this case is governed by the Federal Arbitration Act 9 U.S.C. § 2 and Washington State's Uniform Arbitration Act. Chapter 7.04A RCW. Both statutes reflect a strong policy for enforcement of agreements to resolve disputes via arbitration. Of course the applicable law only requires parties to arbitrate when they have so agreed. The statutes require that the courts enforce privately negotiated agreements to arbitrate in the same manner that the courts

enforce other contracts - in accordance with the contract terms and subject to standard contract defenses. 9 U.S.C. § 2 (“a written provision in ... a contract to settle by arbitration a controversy ... arising out of such contract ... shall be valid, irrevocable, and enforceable save upon any grounds as exist at law or in equity for the revocation of any contract.”); RCW 7.04A et. seq.

A growing body of U.S. Supreme Court decisions have confirmed that both state and federal courts must enforce arbitration agreements which are subject to the Federal Arbitration Act. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 126 S.Ct. 1204, 163 L.Ed.2d 1038 (2006). In *Buckeye* the Supreme Court held that once the trial court determines that there is an enforceable agreement to arbitrate the dispute, then the trial court’s inquiry stops and the remaining matters are left for the arbitrator.

Parties are free to structure their arbitration agreements as they see fit. *Stolt-Nielsen S. A. v. AnimalFeeds Int’l Corp.*, 559 U.S. ----, 130 S.Ct. 1758, 1773-4, --- L.Ed.2d ---- (2010) (“private agreements to arbitrate are enforced according to their terms”) quoting *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479, 109 S. Ct. 1248, 103 L. Ed.2d 488 (1989) and citing *DAI*

v. Casarotto, 517 U.S. 681, 688, 116 S. Ct. 1652, 134 L. Ed.2d 902 (1996).

In *PacifiCare Health Systems, Inc. v. Book*, 538 U.S. 401, 123 S.Ct. 1531, 155 L.Ed.2d 578 (2003) the Court held that lower courts and appellate courts should not take upon themselves the decisions concerning the application of remedial limitations on damages. These matters are to be left strictly for the arbitrator.

The most recent opinion by the U.S. Supreme Court was in *AT&T Mobility, LLC v. Concepcion et. ux.*, ___ US ___, 131 S.Ct. 1740, 179 L.Ed.2d 742 (April 27, 2011) in which the court through Justice Scalia said:

The overarching purpose of the FAA, evident in the text of §§ 2, 3, and 4, is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings.

AT&T Mobility LLC v. Concepcion, 131 S.Ct. at page 1748. Justice Scalia then went on to say:

The “principal purpose” of the FAA is to “ensur[e] that private arbitration agreements are enforced according to their terms.” *Volt*, 489 U.S., at 478, 109 S.Ct. 1248; see also *Stolt–Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. —, —, 130 S.Ct. 1758, 1763, 176 L.Ed.2d 605 (2010). This purpose is readily apparent from the FAA's text. Section 2 makes arbitration agreements “valid, irrevocable, and enforceable” as written (subject, of course, to the saving clause); § 3 requires courts to stay litigation of arbitral claims pending arbitration of those claims “in

accordance with the terms of the agreement”; and § 4 requires courts to compel arbitration “in accordance with the terms of the agreement” upon the motion of either party to the agreement (assuming that the “making of the arbitration agreement or the failure ... to perform the same” is not at issue). In light of these provisions, we have held that parties may agree to limit the issues subject to arbitration, *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985), to arbitrate according to specific rules, *Volt, supra*, at 479, 109 S.Ct. 1248, and to limit *with whom* a party will arbitrate its disputes, *Stolt-Nielsen, supra*, at —, 130 S.Ct. at 1773.

[Emphasis in original]. *AT&T Mobility LLC v. Concepcion*, 131 S.Ct. at pages 1748-1749.

Following the *Buckeye* rule, this court held that if the arbitration clause is enforceable, then the trial court does not have the authority to determine any other dispute the parties agreed to arbitrate. *McKee v. AT & T Corp.*, 164 Wn.2d 372, 383, 191 P.3d 845 (2008).

Our state’s appellate courts have also held that RCW 7.04A.070(1) compels the courts to “summarily” determine a motion to compel arbitration. In *Woodall v. Avalon Care Center Federal Way, LLC*, 155 Wn. App. 919, 231 P.3d 1252 (2010) the Court of Appeals held:

On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement, the court shall order the parties to arbitrate if the refusing party does not appear or does not oppose the motion. *If the refusing party opposes the motion, the court shall proceed summarily to decide the issue.* Unless the court finds that there is no enforceable agreement to

arbitrate, it shall order the parties to arbitrate. If the court finds that there is no enforceable agreement, it may not order the parties to arbitrate. (Italic added).

In *International Union Of Operating Engineers Local 286, v.*

Port Of Seattle, 164 Wn. App. 307, 264 P.3d 268 (2011) the court said:

However, we also hold that the superior court exceeded the scope of its authority when it substituted its own determination of appropriate discipline for the arbitrator's.

The Court of Appeals went on to say:

As explained by the United States Supreme Court, a reviewing court that vacates an arbitration award should not then make its own determination on the merits:

[A]s a rule the court must not foreclose further proceedings by settling the merits according to its own judgment of the appropriate result, since this step would improperly substitute a judicial determination for the arbitrator's decision that the parties bargained for in the collective-bargaining agreement. Instead, the court should simply vacate the award, thus leaving open the possibility of further proceedings if they are permitted under the terms of the agreement.

In *The Heights at Issaquah Ridge, Owners Ass'n v. Burton Landscape*

Group, Inc., 148 Wn. App. 400, 200 P.3d 254 (2009) the court said:

Courts resolve the threshold legal question of arbitrability of the dispute by examining the arbitration agreement without inquiry into the merits of the dispute. If the dispute can fairly be said to invoke a claim covered by the agreement, any inquiry by the courts must end. Washington

State has a strong public policy favoring arbitration of disputes.

Id. at 403-404. Based on the foregoing it is clear that the trial court's order was in error and cannot be supported.

3. *A Showing of Prejudice Should Not Be Required to Raise Issues On Appeal.*

The Court of Appeals holds that DAI failed to show prejudice from the trial court's decision to require that the matter be heard in Washington. The penalty for this perceived failure was the denial of a new arbitration hearing which the Court of Appeals would have ordered had the showing of prejudice not been required of DAI.

Division II points to case law that would require a party to seek discretionary review of an adverse trial court decision, or to show prejudice, as a pre-condition of seeking a new trial on the basis of the venue ruling. *Lincoln v. Transamerica Inv. Corp.*, 89 Wn.2d 571, 578, 573 P.2d 1316 (1978). The Court of Appeals also points to federal case law that holds that a party must show prejudice to challenge an arbitrator's error based on an arbitrator's error as to the choice of law. *Coutee v. Barington Capital Group, L.P.*, 336 F.3d 1128, 1134–35 (9th Cir.2003). However, for the reasons discussed below these cases do not apply to the instant case.

A. Prejudice From Venue Decision: It is clear that Federal law requires that the agreement of the parties be honored, in its entirety. *AT&T Mobility, LLC v. Concepcion, supra*. The Supreme Court did not impose a further burden on the parties in order to seek strict enforcement of the terms of the agreement to arbitrate. While the courts of this state are free to impose standards to seek post-trial relief in cases tried in state courts, our courts may not do so in cases requiring a referral to arbitration.

Because the parties had agreed to Connecticut as choice of venue, DAI is entitled to have the arbitration hearing conducted in Connecticut.

B. Prejudice from Choice of Law:

1. Errors by Trial Court Not The Same as Errors by Arbitrator: The Court of Appeals is correct in reading *Coutee v. Barington Capital Group, L.P., Id.* and *Barnes v. Logan*, 122 F.3d 820 (1997) to hold that a choice of law error *by the arbitrator* does not automatically require an appellate court to vacate the arbitration award. However, in this case, the error was not made by the arbitrator. The error was made by the trial court. This distinction is important. There is a strong policy in favor of confirming an award, unless there is a clear error on the face of the award. *Davidson v. Hensen*, 135 Wn.2d 112, 954 P.2d 1327 (1998). Errors made by a trial court in directing or denying

arbitration are governed by a different standard. Appellate courts will review trial court decisions to grant or to deny arbitration on a de novo basis. *Satomi Owners Ass'n v. Satomi, LLC, supra; Davis v. General Dynamics Land Systems, supra.*

There is also a good reason for the distinction between errors made by an arbitrator and errors made by the trial court. There is generally no record of the arbitration proceeding. However, there is a full record of the trial court proceeding. Therefore, it has also been held that a reviewing court may not examine the reasoning behind an arbitration award. *Boyd v. Davis*, 127 Wn.2d 256, 897 P.2d 1239 (1995). It has also been held that courts have no collateral authority to go behind an arbitration award to determine if the award was correct. *Morrell v. Wedbush*, 143 Wn. App. 473, 178 P.3d 387 (2008). Instead, issues to be decided in arbitration must be decided solely in arbitration and not by the courts. *Id.* Finally, to allow a court to make decisions which are reserved to the arbitrator violates the provisions of the FAA. *Buckeye Check Cashing, Inc. v. Cardegna, supra.* In a recent case, the Fourth Circuit held that a trial court may vacate an arbitration award for manifest disregard of the law (by an arbitrator) if: (1) the applicable legal principle is clearly defined and is not subject to reasonable debate; and (2) the arbitrator refused to heed that legal principle. *Wachovia Securities, LLC v. Brand*, 671 F.3d 472 (C.A.

4, 2012). Here it is clear that the wrong law was followed, not due to error by the arbitrator, but due to error by the trial court. Under such circumstances there is a basis for vacating the award and resetting the case for arbitration.

In *Norris v. S.E.C.*, 675 F.3d 1349 (C.A. Fed, 2012) the Court of Appeals held that in cases involving a “procedural error” it was not necessary to reach the issue of whether another error was harmless or non-prejudicial. Arguably, the so called “procedural error” in *Norris* would be considered to be an error of law outside of the context of labor law. Following the same standard, the remedy was a new hearing with the error having first been corrected.¹

2. *Structural Error Does Not Require*

Showing of Prejudice: In State v. Levy, 156 Wn.2d 709, 132 P.3d 1076 (2006) the Court drew a distinction between structural errors and trial-type errors. The Court pointed out that structural errors resist harmless error review completely because it taints the entire proceedings. Arguably, in a case such as this where the trial court’s order established rules for the conduct of the arbitration proceedings, which were not in accord with the

¹ But “procedural” decisions made in arbitration are different than those made in other contexts. As used in the arbitration setting, procedural decisions occur when the arbitrator is faced with an issue that is not clearly specified in the collective bargaining agreement *while resolving the merits of the dispute*. *Wyandot, Inc. v. Local 227, United Food and Commercial Workers Union*, 205 F.3d 922 (C.A. 6, 2000)

terms of the arbitration agreement, the error was structural and not merely a trial-type error. In such a case, the harmless error doctrine should not apply.

In *State v. Britton*, 27 Wn.2d 336, 342, 178 P.2d 341 (1947) the court used a test to determine if an appellant had been harmed by the trial court's actions. That test required the appellate court to look to "...the whole record, and not to that part only which precedes and includes the particular exception under consideration." *Id.* Here, it is impossible for any appellate court to look at the entire record to see how the decision of the arbitrator was influenced by the trial court's order. There simply is no such record to review. In the absence of the ability to present a record to review, through no fault of its own, DAI should not be prejudiced by the imposition of prejudice standard, where the trial court's error is so clear.

3. *Trial Court Lacked Authority to Enter*

Judgment: In *Davidson v. Hensen*, 85 Wn. App. 187, 933 P.2d 1050 (1997), *aff'd* 135 Wn.2d 112 (1998) Division II of the Court of Appeals held that a trial court has no jurisdiction to enter a void judgment and no jurisdiction to confirm a void arbitration award. Once the trial court determines that the arbitrator exceeded his authority, the award is void and thus beyond the authority of the court to confirm. The sole authority of the trial court is to either not confirm or to vacate the award. *Davidson*,

supra; *ACF Property Management, Inc. v. Chausse*, 69 Wn. App. 913, 850 P.2d 1387 (1993).

In *ACF Property Management, Inc. v. Chausse, Id.* the Court of Appeals noted that when a party is compelled to arbitrate a claim that is not arbitrable under the agreement, it is still entitled to challenge the validity of the arbitrator's award when the other party moves to have the award confirmed. That Court of Appeals decision found no requirement that the party show prejudice to be able to attack the award. Rather, the award was void and could not be confirmed.

In *Barnett v. Hicks*, 119 Wn.2d 151, 829 P.2d 1087 (1992) this Court held that the superior court has precisely circumscribed authority when passing on an arbitrator's decision. It also held that an appellate court's inquiry is similarly limited in addressing an appeal from a superior court's decision. The Court then held that the superior court may only confirm, vacate, modify or correct an arbitrator's award. Under this standard there is no place for appellate courts to review the award to determine if a party was prejudiced by an underlying trial court decision that clearly governed the conduct of the hearing. Rather, the proper approach is to vacate the award and allow the parties to arbitrate the case under the proper rules and standards.

This approach has also been recognized in Washington, in a series

of cases including *Expert Drywall, Inc. v. Ellis-Don Const., Inc.*, 86 Wn. App. 884, 939 P.2d 1258 (1997). In that case the Court of Appeals held that the authority of the courts is limited to vacating an award where the arbitrator has exceeded his authority. In *Cummings v. Budget Tank Removal & Environmental Services, LLC*, 163 Wn. App. 379, 260 P.3d 220 (2011) Division I of the Court of Appeals held:

This court's review of an arbitrator's award is limited to that of the court which confirmed, vacated, modified, or corrected that award. The trial court's review is confined to the question of whether any of the statutory grounds for vacation exist.

Id. at 388. The court went on to hold that “[i]n deciding a motion to vacate, a court will not review the merits of the case, and ordinarily will not consider the evidence weighed by the arbitrators.” *Id.*, at 389. Nor is it the role of the appellate courts to try the case *de novo* or to examine the evidence submitted to the arbitrator. *Moen v. State*, 13 Wn. App. 142, 533 P.2d 862 (1975).

In the instant case the trial court did what it should not have done. It entered a judgment that was void due to its prior errors. It should have vacated the award. The Court of Appeals furthered erred by changing the rules to allow a void judgment to stand. The only proper decision of the Court of Appeals was to overturn the trial court’s order confirming the award.

4. Prejudice Has Been Shown.

The Court of Appeals indicates that Appellant failed to show that there was any prejudice in a compensatory damage award of \$230,000 when the contractual limitation was \$100,000. (CP 89, 38, 54, and 68). Yet, it is obvious that the cap was exceeded by more than two times. It is unclear if that was because the Arbitrator determined that there was no cap on damages due to the trial court order of September 19, 2008, or if he determined that the damages could be fixed at \$100,000 per store. The Court of Appeals determined that it was Appellant's burden to show prejudice from the award. *Saleemi v. Doctor's Associates, Inc.*, at 94. Instead the Court of Appeals should have determined that this was a matter to be determined by arbitration and not by the courts. *Buckeye Check Cashing, Inc. v. Cardegna, supra*. As it is also unclear if the choice of law determination impacted the decision of the arbitrator, the clear error required the resubmittal of this matter for a new arbitration hearing, under the terms of the Arbitration Agreements.

5. A Party is Never Required to Seek Discretionary Review

Prior case law in this state makes it clear that a party is not required to seek discretionary review, even if the criteria for seeking discretionary review are satisfied. *In re Det. of Petersen*, 138 Wn.2d 70, 88-90, 980 P.2d 1204 (1999). Rather our courts have held that discretionary review is

disfavored because it lends itself to piecemeal, multiple appeals. *Right-Price Recreation, L.L.C. v. Connells Prairie Cmty. Council*, 146 Wn.2d 370, 380, 46 P.3d 789 (2002). This court has noted on various occasions that discretionary review is rarely granted. *DGHI Enters. v. Pac. Cities, Inc.*, 137 Wn.2d 933, 949, 977 P.2d 1231 (1999). Therefore, it is contrary to precedent when the Court of Appeals imposes a requirement that a party seek discretionary review or risk being held to a higher standard to prevail on that appeal.

Nor does the Court of Appeals consider whether a showing of prejudice would have been required if a motion for discretionary review had been filed and rejected by the Court of Appeals.

As was noted in *ACF Property Management, Inc. v. Chausse*, supra, there is no way to know whether a panel of the Court of Appeals would have accepted the case for review. In this case, it is unclear if DAI would have been able to satisfy the Court of Appeals to grant discretionary review under **RAP 2.3**.

There is no way to tell if this decision by the Court of Appeals will lead to more filings for discretionary review. However, if the failure to seek discretionary review means that a party will be held to a different standard, in order to prevail on an appeal, then such an outcome seems likely.

6. *Attorney Fees*

In Washington, parties to litigation may only recover attorney fees where allowed by a statute, contract, or some well-recognized principle of equity. *Marassi v. Lau*, 71 Wn. App. 912, 918, 859 P.2d 605 (1993); RCW 4.84.330. Here, Section 10 e of the Franchise Agreements entitles DAI to an award of attorney fees. That section provides:

If prior to an Arbitrator's final decision, either we (DAI) or you (plaintiffs) commence an action in any court of a claim that arises out of or relates to this Agreement (except for the purpose of enforcing the arbitration clause or as otherwise permitted by this Agreement), that party will be responsible for the other party's expenses of enforcing the arbitration clause, including court costs, arbitration filing fees and other costs and attorney's fees.

CP 35, 51, & 65, para 10 e.

III. CONCLUSION

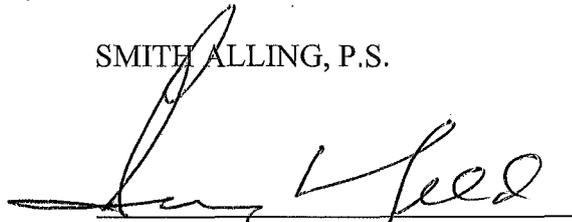
The trial court's order substituting its terms for the arbitration for the terms of the Arbitration Agreements is clear error and must be reversed. The showing of prejudice requirement, interposed by the Court of Appeals should also be reversed. In *NCR Corp. v. Sac-Co., Inc.*, 43 F.3d 1076 (C.A. 6, 1995) the appellate court held that a court may only remand a case back to the arbitrator when an arbitration award is ambiguous. That same court held that remand was not appropriate remedy for arbitrator's improper award of punitive damages as award was not ambiguous. As in

the *NCR* case, the award is not ambiguous. It is in clear disregard of the cap on damages in the Franchise Agreements. Therefore, the proper remedy is a new arbitration hearing.

The award of the arbitrator should be vacated and the parties should be required to resubmit all of their disputes to arbitration as contractually agreed without the improper predetermination of issues by the court. Further, this court should order the award of attorney's fees, to DAI, at all levels of this litigation.

Dated this 5th day of July, 2012.

SMITH ALLING, P.S.

A handwritten signature in black ink, appearing to read "Gary H. Branfeld", is written over a horizontal line.

Gary H. Branfeld, WSBA #6537
Attorney for Appellant

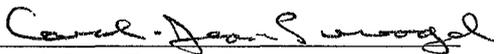
CERTIFICATE OF SERVICE

I, Carol-Jean Puvogel, hereby declare under the penalty of perjury under the laws of the State of Washington in the County of Pierce that on July 5, 2012, I mailed, postage prepaid, and properly addressed a true and correct copy of Appellant's Memorandum of Authorities to the following addresses:

Law Offices of Douglas D. Sulkosky
Douglas D. Sulkosky
1105 Tacoma Avenue S
Tacoma, WA 98402

Todd S. Baran, PC
Attorney at Law
4004 SE Division St
Portland, OR 97202-1645

Dated at Tacoma, Washington this 5th day of July, 2012.



Carol-Jean Puvogel

APPENDIX

- 1. Court of Appeals Published Opinion, Docket No. 08-2-11956-0
Date Filed Jan. 24, 2012**
- 2. Franchise Agreement #1878, executed March 2, 2004**
- 3. Franchise Agreement #14570, executed June 14, 2006**
- 4. Franchise Agreement #13913, executed June 21, 2006**
- 5. Pierce County Superior Court - Order on Motion to Determine Arbitrability,
dated Sept. 19, 2008**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WAQAS SALEEMI, a single man, and
FAROOQ SHARYAR, a single man,

Respondents,

v.

DOCTOR'S ASSOCIATES, INC., a Florida
corporation,

Appellants.

No. 40351-0-II

PUBLISHED OPINION

Johanson, J. — Doctor's Associates, Inc. (DAI) entered into three franchise agreements with Waqas Saleemi and Farooq Sharyar (Saleemi). Each agreement required the parties to arbitrate their disputes in Connecticut, under Connecticut substantive law, and included a damages-limitation provision. After a dispute arose, DAI filed for arbitration in Connecticut and Saleemi filed a civil lawsuit against DAI in Washington. When DAI moved to compel arbitration under the terms of the agreements, the trial court struck the arbitration site (venue), choice of law, and damages-limitation provisions and ordered the parties to arbitrate the dispute in Washington, under Washington law, without any damages limitation. DAI did not move for discretionary review of the trial court's order. After the arbitrator found in Saleemi's favor, Saleemi moved in the superior court to confirm the arbitration award, and DAI moved to vacate the award. The superior court denied DAI's motion to vacate the arbitration award in full and confirmed the

No. 40351-0-II

arbitration award.¹ DAI appeals, arguing that, although the trial court did not err in compelling arbitration generally, it (1) exceeded its authority when it determined that the venue, choice of law, and damages-limitation provisions were unenforceable; (2) erred in finding that the venue, choice of law, and damages-limitation provisions were unconscionable; (3) erred in failing to award DAI attorney fees and costs; (4) erred in confirming the arbitrator's award; and (5) erred in awarding Saleemi "post arbitration award" attorney fees. Br. of Appellant at 2. Although we remand to the superior court to award attorney fees and costs to DAI on the motion to compel, because DAI does not establish prejudice, we affirm the order on the motion to compel and the order confirming the arbitrator's award.

FACTS

I. Franchise Agreements, Alleged Breach, and Lawsuit

DAI franchises Subway sandwich shops. On March 2, 2004, June 14, 2006, and June 21, 2006, DAI and Saleemi entered into franchise agreements for three Subway stores in Pierce County. Each of these agreements required binding arbitration in Connecticut and contained choice of law, attorney fee, and damages-limitation provisions.

In June 2008, DAI attempted to terminate the franchise agreements after it obtained information leading it to believe that Saleemi had violated the noncompetition clause in the franchise agreements. On August 20, DAI demanded arbitration in Bridgeport, Connecticut.

On August 28, Saleemi filed a civil complaint against DAI in Pierce County Superior Court, alleging that Saleemi had cured the default and that DAI's attempt to terminate the

¹ The superior court did, however, strike the prejudgment interest that had been included in the award. That portion of the superior court's decision is not at issue in this appeal.

No. 40351-0-II

agreements without an opportunity to cure violated RCW 19.100.180(2)(j).² Saleemi asked the superior court to “restrain[]” DAI from “arbitrating this matter and from arbitrating the matter in the [s]tate of Connecticut.” Clerk’s Papers (CP) at 2.

II. Trial Court Order Compelling Arbitration in Washington, Under Washington Law, Without Damages Limitation

In its answer, DAI asserted that the superior court “lack[ed] appropriate jurisdiction over the parties” because the Agreements required arbitration, challenged the superior court’s venue, and asked the superior court to dismiss Saleemi’s complaint and award attorney fees and costs. CP at 6. But DAI also asserted a “counterclaim,” asking the superior court to enter an order compelling arbitration and arguing that the agreements’ arbitration clauses required binding arbitration in Bridgeport, Connecticut and that “[v]enue” was not in Washington State. CP at 6. DAI also requested attorney fees under the agreements because Saleemi had “failed and refused to engage in arbitration.” CP at 7. In its motion to compel arbitration, DAI asserted:

It is undisputed that the Agreements provide that the laws of the [S]tate of Connecticut shall govern the interpretation and enforcement of the Agreements.

² RCW 19.100.180(2)(j) states, in part:

(2) For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and a violation of this chapter for any person to:

.....

(j) Terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include, without limitation, the failure of the franchisee to comply with lawful material provisions of the franchise or other agreement between the franchisor and the franchisee *and to cure such default after being given written notice thereof and a reasonable opportunity*, which in no event need be more than thirty days, *to cure such default*, or if such default cannot reasonably be cured within thirty days, the failure of the franchisee to initiate within thirty days substantial and continuing action to cure such default.

(Emphasis added).

The Agreements do provide for the application of the *Franchise Investment Protection Act* [(FIPA)] of this state. However, there is nothing in that statute which restricts the use of a choice of forum or an arbitration clause. Therefore, the Washington FIPA still provides no basis for this lawsuit.

CP at 11. Saleemi opposed the motion to compel.³

At the motion hearing, the superior court stated that its “biggest concern” was the venue provision, noting that it was particularly concerned because the “alleged non-compete issue” occurred in Washington, and it might be a hardship for Saleemi to face arbitration in Connecticut when all the witnesses were in Washington. Verbatim Transcript of Proceedings (VTP) (Sept. 19, 2008) at 5, 7. Although DAI acknowledged that the venue provision was severable and stated that it would proceed with arbitration in Washington if the superior court ordered such arbitration, DAI continued to argue that the superior court should find that Saleemi was required to arbitrate the matter in Connecticut.⁴ DAI also stated that Washington’s FIPA would apply even if the arbitration took place under the terms of the agreements.

³ Saleemi also moved to amend his complaint “to include the claim that the arbitration paragraphs in the Franchise Agreements are unconscionable under the laws of the State of Washington.” CP at 81. But Saleemi withdrew his motion to amend the complaint after the trial court ordered arbitration in Washington.

⁴ For example, DAI’s counsel argued:

If the Court rules that the matter go to arbitration but orders that it take place in Washington, my client will, of course, abide by that particular determination, but there’s no question that this matter has to be decided by arbitration, under the agreement, is scheduled to take place and should take place a[t] a forum in the state of Connecticut.

....

Certainly, under a situation such as this, the Court should . . . order that the arbitration take place and should order that the arbitration take place in the venue where the parties, by agreement, not once, not twice, but on three separate occasions agreed to the venue that would be set.

VTP (Sept. 19, 2008) at 8-9.

On September 19, 2008, without hearing any argument related to the choice of law provision or the damages limitation, the superior court found the venue clause unconscionable and ordered “that the disputes between the parties shall be arbitrated in Washington under Washington law, with no limitation on remedies.”⁵ CP at 218. The superior court did not enter any order (oral or written) regarding DAI’s request for attorney fees in its motion to compel arbitration. DAI did not move for discretionary review of the September 19, 2008 order.

III. Arbitration Award and Motion to Vacate Arbitration Award

The parties proceeded to arbitration in Washington before an American Arbitration Association arbitrator. CP at 222. In his “interim award,” the arbitrator (1) found in Saleemi’s favor; and (2) stated, “Claimant DAI shall pay to respondents ‘compensatory damages’ as that term is defined in section 17 of exhibit 52.^[6] They may choose either option.” CP at 290 (capitalization omitted). The arbitrator awarded Saleemi a total of \$230,000 in “compensatory damages,” \$161,536 in attorney fees, and \$32,837.96 in costs.⁷ CP at 222. Saleemi moved in the

⁵ The superior court also orally ruled:

Well, I am going to find that the forum selection is unconscionable under this circumstance and—but on the other hand, I am going to order that there be arbitration in the state of Washington. I’m also going to order that there be no limit to the remedies in the arbitration.

So you’re going to get your arbitration, but we’re going to have Washington law, Washington forum, and no limit to the remedies.
VTP (Sept. 19, 2008) at 17.

⁶ The reference to “section 17 of exhibit 52” appears to be to section 17 of the Agreements. Section 17 set out the damages-limitation clause, which contained two alternative methods for calculating compensatory damages. CP at 38, 54, 68-69.

⁷ The arbitrator also indicated that this award would bear interest from the date of the award until paid in full. The superior court later determined that the start date of the prejudgment interest award was incorrect. That portion of the superior court’s decision is not at issue in this appeal.

superior court to confirm the arbitration award; DAI opposed Saleemi's motion to confirm the arbitration award and moved to vacate the award, arguing that the superior court's September 2008 order was improper.

On January 22, 2010, the superior court heard argument on both of these motions. DAI argued that the superior court had exceeded its authority when it decided that the venue, choice of law, and damages-limitation provisions were unconscionable. DAI asserted that the validity of these three provisions was a question for the arbitrator in Connecticut and that the superior court lacked the authority to address them.

In response, the superior court asked DAI why it had proceeded to arbitration rather than moving for discretionary review of the 2008 order.⁸ DAI explained:

We looked at that particular issue at the time, to be frank. We looked at the statute . . . , and we came to the conclusion that the likelihood of the Court taking it back at that particular point was not very great and the costs and expenses at that particular point in time, who knew, the cost and expenses of taking the appeal would not be a wise allocation. We thought we would get a decision, a different decision, but it would have been a discretionary review. So that alone is not grounds. I've cited to the case law in that particular area and that's not a final order.

. . . .
. . . So that's the particular reason for it. We made a decision for economic reasons at that time that we thought we could take this particular shot. It's not like we didn't raise all of these issues in the first go-round. We did. Every issue that I am raising now is in the briefs that we submitted, originally.

So what we have now is mainly the benefit of new case law that has come

⁸ Specifically, the superior court stated:

[M]y question [is], if now a year and a half later with a result which clearly the defendant is not very happy with, now say, oh, what you did a year and a half ago was wrong, when you had an opportunity to at least ask for a discretionary review on a critical issue, obviously. If this should have gone to Connecticut, that should have been decided then.

Verbatim Report of Proceedings (VRP) (Jan. 22, 2010) at 7.

No. 40351-0-II

down since the Court's original determination in September of 2008 that clearly directs that the trial court enter an order that does not weigh upon this particular process and leaves these matters for the arbitrator.

VRP (Jan. 22, 2010) at 7-8.

The superior court denied DAI's motion to vacate and granted Saleemi's motion to confirm the arbitration award. The superior court stated:

Well, I think you knew you had a tough row to hoe when you got here this morning, and I'm going to deny your motion to vacate. You know, I don't even need to hear from the plaintiffs in terms of this portion of it. I think there were other remedies in 2008. It is clear that the defense is unhappy with the result, so you're trying to get a second bite at the apple and it's not going to happen on my watch. Let the Court of Appeals sort that part of it out.

VRP (Jan. 22, 2010) at 9. Saleemi later moved for attorney fees related to confirming the arbitration award. The superior court awarded Saleemi \$6,453.33 in attorney fees.

DAI appeals (1) the superior court's September 2008 order requiring arbitration in Washington, under Washington law, and without any damages limitations;⁹ (2) the January 22, 2010 order denying DAI's motion to vacate the arbitrator's award in full; (3) the February 12, 2010 order confirming the arbitrator's award and final judgment; and (4) the March 19, 2010 order on motion for attorney fees. DAI's arguments, however, focus on whether the superior court's 2008 order was proper.

⁹ We note that DAI does not assert that the superior court erred in compelling arbitration or that the matter was not subject to arbitration under the arbitration clause.

ANALYSIS

I. Threshold Issue: Review of 2008 Ruling

As a preliminary matter, Saleemi asserts that we cannot consider DAI's challenges to the superior court's September 2008 order because DAI did not appeal that ruling before proceeding to arbitration. Instead, Saleemi asserts that we can examine only whether the superior court later had any ground for rejecting the arbitrator's decision under RCW 7.04A.230.¹⁰ We disagree.

¹⁰ RCW 7.04A.230 provides:

(1) Upon motion of a party to the arbitration proceeding, the court shall vacate an award if:

(a) The award was procured by corruption, fraud, or other undue means;

(b) There was:

(i) Evident partiality by an arbitrator appointed as a neutral;

(ii) Corruption by an arbitrator; or

(iii) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to RCW 7.04A.150, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(d) An arbitrator exceeded the arbitrator's powers;

(e) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under RCW 7.04A.150(3) not later than the commencement of the arbitration hearing; or

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in RCW 7.04A.090 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(2) A motion under this section must be filed within ninety days after the movant receives notice of the award in a record under RCW 7.04A.190 or within ninety days after the movant receives notice of an arbitrator's award in a record on a motion to modify or correct an award under RCW 7.04A.200, unless the motion is predicated upon the ground that the award was procured by corruption, fraud, or other undue means, in which case it must be filed within ninety days after such a ground is known or by the exercise of reasonable care should have been known by the movant.

(3) In vacating an award on a ground other than that set forth in subsection (1)(e) of this section, the court may order a rehearing before a new

On July 16, 2010, our commissioner denied Saleemi's motion to dismiss this appeal in which Saleemi asserted that DAI's challenge to the September 2008 order was untimely. *See spindle*. We then denied Saleemi's motion to modify the July 16, 2010 commissioner's ruling because the September 2008 order was not a final order that was appealable as of right. Saleemi's arguments do not convince us that the commissioner's ruling or our denial of Saleemi's motion to modify that ruling was incorrect.

Although DAI *could have* moved for discretionary review of the September 2008 order, that order was not appealable of right, and DAI was not *required* to appeal the ruling until after a final order was issued in this matter. *All-Rite Contracting Co. v. Omev*, 27 Wn.2d 898, 900-01, 181 P.2d 636 (1947); *ACF Prop. Mgmt., Inc. v. Chaussee*, 69 Wn. App. 913, 921 n.7, 850 P.2d 1387, *review denied*, 122 Wn.2d 1019 (1993); *Teufel Constr. Co. v. Am. Arbitration Ass'n*, 3 Wn. App. 24, 25, 472 P.2d 572 (1970). That DAI failed to move for discretionary review does not prevent us from considering the propriety of the September 2008 order. *See* RAP 2.2; RAP 2.3(a); *ACF Prop. Mgmt., Inc.*, 69 Wn. App. at 921-22 (a party does not waive the issue of arbitrability by failing to seek discretionary review of decision on arbitrability in motion to compel arbitration); *see also* RAP 2.4(b).

Saleemi also appears to assert that we may review the September 2008 order only under

arbitrator. If the award is vacated on a ground stated in subsection (1)(c), (d), or (f) of this section, the court may order a rehearing before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in RCW 7.04A.190(2) for an award.

(4) If a motion to vacate an award is denied and a motion to modify or correct the award is not pending, the court shall confirm the award.

No. 40351-0-II

the statutory grounds set out in RCW 7.04A.230. Although we review arbitration awards to determine only whether any statutory grounds for vacation exist under RCW 7.04A.230,¹¹ reviewing the superior court's 2008 decision on DAI's motion to compel arbitration does not require us to review the arbitration award itself. Because we are not reviewing the arbitration award itself, we are not confined to the enumerated statutory grounds in RCW 7.04A.230. Instead, the ruling on the motion to compel is a decision separate from the arbitration award that was not a final order and was not appealable as of right until after the superior court issued a final order in this matter. *See ACF Prop. Mgmt., Inc.*, 69 Wn. App. at 922.

Saleemi also suggests that DAI waived its right to appeal the 2008 order by acquiescing to the superior court's 2008 order and proceeding with the arbitration under the terms of that order. In effect, Saleemi is asserting that by failing to move for discretionary review, DAI waived its right to challenge the September 2008 order. But DAI clearly objected to the 2008 order before going forward with the arbitration, and Saleemi does not direct us to any law that required DAI to move for discretionary review before a final order was entered in this matter. *See ACF Prop. Mgmt., Inc.*, 69 Wn. App. at 922.

Saleemi also argues that DAI invited any error here. He maintains that the following statement from DAI during the September 19, 2009 hearing amounted to an invitation to arbitrate in Washington:

Therefore, we would request very simply that you order this matter go before arbitration. We believe it should take place in Connecticut. If you should choose and say that Connecticut is an improper forum, then it can take place in the

¹¹ *See Expert Drywall, Inc. v. Ellis-Don Constr., Inc.*, 86 Wn. App. 884, 888, 939 P.2d 1258 (1997), *review denied*, 134 Wn.2d 1011 (1998).

state of Washington. But the long and the short of it, the essence of this dispute must be resolved in arbitration and not in [s]uperior [c]ourts.

VTP (Sept. 19, 2008) at 16-17. We disagree.

The doctrine of invited error precludes review when the appellant induces the trial court to take the action to which error is assigned on appeal. *In re Dependency of K.R.*, 128 Wn.2d 129, 147, 904 P.2d 1132 (1995). The instances in the record to which Saleemi cites do not amount to inducing the trial court to take action. DAI consistently argued that the agreements required arbitration in Connecticut under Connecticut substantive law. Nothing in the record indicates that DAI was changing this position. Rather, the record merely shows that DAI was cognizant that if the trial court ordered arbitration in Washington, it would go forward with the arbitration.

II. Failure to Seek Discretionary Review Requires DAI to Establish Prejudice

DAI does not challenge the superior court's authority to compel arbitration or to determine the enforceability of the arbitration agreement generally.¹² Instead, it argues that the superior court exceeded its authority in striking the venue, choice of law, and damages-limitation provisions and asserts that the arbitrator should have determined the validity of these provisions. DAI also argues that even if the superior court had the authority to address the enforceability of these provisions, the record does not support the superior court's decision to strike these provisions. Even assuming that the superior court exceeded its authority in addressing the venue, choice of law, and damages-limitation provisions and in concluding that these provisions were

¹² See Br. of Appellant at 14 ("If the arbitration clause is enforceable, all other disputes subject to the parties' agreement to arbitrate must be determined by arbitration."); see Br. of Appellant at 15 ("Thus, where there is a challenge to the *enforceability* of an arbitration agreement clause, the court must determine that issue in isolation. RCW 7.04A.060(2)." (emphasis added.)).

unconscionable, we hold that DAI is not entitled to relief because it fails to establish any possible prejudice.¹³

As we discussed above, a party does not waive its right to challenge an interlocutory order that is not a final order appealable as of right by failing to move for discretionary review. But a party is not necessarily allowed to acquiesce to the interlocutory order and wait to appeal the allegedly adverse interlocutory ruling until it knows the outcome of the proceedings without any consequences. In cases like this, which involve venue decisions, case law supports requiring a party that knowingly chooses to await the outcome of the proceeding before challenging an interlocutory order on a venue motion to show that it suffered prejudice before this court will grant relief. *See Lincoln v. Transamerica Inv. Corp.*, 89 Wn.2d 571, 578, 573 P.2d 1316 (1978) (if the party objecting to venue fails to move for discretionary review, then the appellate courts

¹³ In supplemental briefing this court ordered, DAI asserts that we should presume prejudice because there is no record of the arbitration so we cannot determine if anything that occurred in arbitration was prejudicial. But, as we discussed above, we are examining the trial court's 2008 ruling, not the arbitration itself, and DAI could establish the required prejudice by presenting information outside the arbitration record, such as establishing that there are differences between Connecticut and Washington law that could have made a difference in this case or that DAI would have had access to additional evidence in a different venue. DAI also asserts that harmless error is improper when reviewing an arbitrator's decision. Again, we are not reviewing the arbitration itself but, rather, the trial court's 2008 ruling, so this argument is inapposite.

DAI also asserts that we should presume prejudice because the errors here are similar to instructional errors resulting in errors of law. But DAI does not show that any error of law occurred here, a preliminary step that is required before we presume prejudice. *See Keller v. City of Spokane*, 146 Wn.2d 237, 249, 44 P.3d 845 (2002) (in general an instructional error will not be reversed absent a showing of prejudice, but "[a] clear misstatement of the law, however, is presumed to be prejudicial.").

DAI further argues that we should presume prejudice because these are "structural errors" that "taint[ed]" the entire proceedings. Appellants' Suppl. Br. at 3. But DAI offers no support for this assertion, nor does it show that the arbitration here was conducted under different procedural or substantive rules or law than would have applied if the arbitration had occurred in Connecticut or under Connecticut law.

require that party to show that the denial of motion to change venue was prejudicial). Because of the similar procedural posture here, we apply the rule from *Lincoln* and hold that in order to obtain relief, DAI must affirmatively establish that there is a possibility that the trial court's 2008 order was prejudicial to DAI.

The only prejudice DAI alleges is that it was denied the benefit of arbitration in Connecticut, under Connecticut law, subject to the damages limitation. But it is DAI's burden to show not only that the proceedings could have been different but that there is some possibility that the *outcome* of the proceedings could have been different had the arbitration been held in Connecticut, under Connecticut law, subject to the damages limitation. *See Coutee v. Barington Capital Group, L.P.*, 336 F.3d 1128, 1134-35 (9th Cir. 2003) (examining whether arbitrator's failure to follow valid, enforceable choice of law clause was harmless; refusing to apply bright-line rule that would require automatic vacation of arbitration award if choice of law clause was not followed and emphasizing that harmless error approach does not contradict the Federal Arbitration Act); *Barnes v. Logan*, 122 F.3d 820 (1997) (applying harmless error analysis in choice of law context), *cert. denied*, 523 U.S. 1059 (1998); *Lincoln*, 89 Wn.2d at 578 (possible venue error not presumptively prejudicial). The record does not suggest that the arbitration that occurred under the 2008 ruling would have differed if it had been conducted under the terms in the agreements: (1) the arbitration was conducted by the arbitration association designated in the contracts and the same association would have been responsible for any arbitration in Connecticut; (2) DAI does not describe any advantage it would have received had the arbitration physically occurred in Connecticut; (3) DAI repeatedly admits that Washington FIPA would have

applied and points to no differences between Washington and Connecticut law that could have affected these proceedings; (4) the record shows that the arbitrator in fact directed the parties to apply the damages limitation by requiring that the parties apply the definition of “compensatory damages” established in paragraph 17 of the agreement; and (5) DAI does not show that the damages award exceeded the limitations set in each of the franchise agreements.

Because DAI fails to allege, let alone establish, any prejudice, we affirm the superior court’s 2008 order compelling arbitration in Washington, under Washington law, without a damages limitation. Additionally, because DAI’s challenges to the order affirming the arbitrator’s award all relate to its challenge to the 2008 order, we also affirm the order confirming the amended arbitration award.

III. Attorney Fees

A. Fees on Motion to Compel

In addition to challenging the 2008 superior court order, DAI also argues that the superior court erred when it did not award DAI attorney fees and costs incurred in enforcing the arbitration clause, as required under paragraph 10(e) of the agreements and RCW 4.84.330.¹⁴ DAI requests that we remand to the trial court to award reasonable attorney fees. We agree.

¹⁴ RCW 4.84.330 provides:

In any action on a contract . . . entered into after September 21, 1977, where such contract . . . specifically provides that attorney’s fees and costs, which are incurred to enforce the provisions of such contract . . . , *shall be* awarded to one of the parties, the prevailing party, whether he is the party specified in the contract or lease or not, shall be entitled to reasonable attorney’s fees in addition to costs and necessary disbursements.

(Emphasis added).

After DAI started arbitration proceedings in Connecticut, Saleemi responded by initiating a civil action in the superior court rather than moving for arbitration in Washington or Connecticut. In its answer to Saleemi's civil claim and motion to compel arbitration, DAI asserted that it was entitled to attorney fees under the three Franchise Agreements. When the superior court entered the order compelling arbitration, it did not address any attorney fees or costs. Because paragraph 10(e)¹⁵ of the contracts expressly provide for attorney fees and costs, the superior court erred in failing to award attorney fees and costs to DAI. Accordingly, we remand to the superior court to award attorney fees and costs related to DAI's "expenses of enforcing the arbitration clause, including court costs, arbitration filing fees and other costs and attorney's fees." CP at 35, 51, 65.

B. Attorney Fees and Costs Related to Confirmation of Arbitrator's Award

DAI also argues that if we reverse the superior court's order confirming the arbitrator's award, the superior court also erred in awarding Saleemi attorney fees and costs incurred in confirming the arbitrator's award. Because we do not reverse the superior court, this argument

¹⁵ Paragraph 10(e) provides:

Any disputes concerning the enforceability or scope of the arbitration clause shall be resolved pursuant to the Federal Arbitration Act, 9 U.S.C. § et seq. ("FAA"), and the parties agree that the FAA preempts any state law restrictions (including the site of the arbitration) on the enforcement of the arbitration clause in this Agreement. *If, prior to an Arbitrator's final decision, either we or you commence an action in any court of a claim that arises out of or relates to this Agreement (except for the purpose of enforcing the arbitration clause or as otherwise permitted by this Agreement), that party will be responsible for the other party's expenses of enforcing the arbitration clause, including court costs, arbitration filing fees and other costs and attorney's fees.*

CP at 35, 51, 65 (emphasis added).

fails.

C. Attorney Fees and Costs on Appeal

Finally, DAI argues that it is also entitled to attorney fees and costs on appeal. Because DAI is not the prevailing party on appeal, we deny DAI's request for attorney fees and costs on appeal.

Saleemi requests fees on appeal under RCW 7.04A.250(3),¹⁶ which states:

On application of a prevailing party to a contested judicial proceeding under . . . 7.04A.230 . . . , the court may add to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award, attorneys' fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made.

Saleemi is the substantially prevailing party. Accordingly, we award Saleemi attorney fees and costs under RCW 7.04A.250 to be determined upon his compliance with RAP 18.1.

We affirm the superior court's 2008 order compelling arbitration and the order confirming the arbitrator's award. But we remand to the superior court to determine attorney fees and costs related to DAI's motion to compel arbitration and to award those fees and costs to DAI.

Johanson, J.

We concur:

Armstrong, P.J.

Van Deren, J.

¹⁶ Saleemi requests fees under RCW 19.86.090. We decline to consider this request because although he asserts that the arbitrator awarded fees and costs under chapter 19.86 RCW, nothing in the record supports that claim.

Schedule A-2

FRANCHISE #1878

DATE EXECUTED March 2, 2004

FRANCHISE AGREEMENT

DOCTOR'S ASSOCIATES INC.

with

Waqas M. Saleemi

Farooq S. Sharyar

FRANCHISE AGREEMENT

This Franchise Agreement (this "Agreement") is made March 2, 2004 between Doctor's Associates Inc., a Florida corporation with a principal office in Fort Lauderdale, Florida ("we" or "us"), and Waqas M. Saleemi and Farooq S. Sharvar of Washington ("you"), for one (1) SUBWAY® restaurant (the "Restaurant") to be located within the territory of Development Agent Ethan Golf or the Development Agent's successor(s), under DA contract number 580, as specified in Item 2 of the DAI Offering Circular in effect as of the date of this Agreement.

RECITALS:

A. We are the owner of a proprietary system (the "System") for establishing and operating restaurants featuring sandwiches and salads under our trade name and service mark SUBWAY®,. We developed the System spending considerable money, time, and effort. The System includes the trademark SUBWAY®, other trademarks, trade names, service marks, commercial announcements (slogans) and related insignia (logos) we own (the "Marks"); goodwill associated with the Marks; trade dress; recipes; formulas; food preparation procedures; business methods, forms, and policies; trade secrets; knowledge; techniques; and developments.

B. We operate and franchise others to operate SUBWAY® restaurants using the System, including the Marks.

C. You want access to the System to establish and operate the Restaurant at a location you select and we approve.

D. You acknowledge the System includes confidential and proprietary information which we, our Affiliates (defined below), our development agents and our Affiliates' development agents, franchisees, and agents, will give you to use only to establish and operate the Restaurant. An "Affiliate" means a person or entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another person or entity.

E. We have granted, and will continue to grant, access to the System to others to establish and operate SUBWAY® restaurants. Our goal is to be the number one quick service restaurant system in every market we enter. This Agreement does not grant you the right to own additional SUBWAY® restaurants. You acknowledge we do not have to sell you additional franchises or consent to your purchase of existing franchises.

F. You acknowledge the only consideration we receive from you for granting you the license to use the System consists of the Franchise Fee, the Royalty and performance of your other promises under this Agreement.

G. You acknowledge you personally received our Franchise Offering Circular and its exhibits, including this Agreement (the "Offering Circular"), at or prior to your first personal meeting with our employee, development agent, agent, or representative and at least ten (10) business days before you signed this Agreement, and you signed a Receipt for the Offering Circular. You represent you carefully reviewed the Offering Circular and had enough time to consult with a lawyer, accountant, or other professional advisor, if you wanted, and you understand and agree to be bound by the terms, conditions, and obligations of this Agreement. You also represent you had full opportunity, with the help of a professional advisor if you used one, to ask us and our employees, development agents, agents, or representatives, all appropriate questions and we and our employees, development agents, agents or representatives answered all of your questions to your satisfaction, except questions on the subject of potential earnings, discussed in the following paragraph. If you did not use a professional advisor, you represent you are satisfied relying on your own education, experience, and skill in evaluating the merits of a franchise offering.

H. You acknowledge no employee, agent, or representative of ours, or of our Affiliates, or our development agents, made any oral, written or visual representation or projection to you of actual or potential sales, earnings, or net or gross profits. You also acknowledge no employee, agent, or representative of ours, or of our Affiliates, or our development agents, has made any statements that are contrary to, or different from, the information in the Offering Circular, including but not limited to any statements about advertising, marketing, media support, media penetration, training, store density, store locations, support services and assistance, or the costs to establish or operate a SUBWAY® restaurant, except for any statements you wrote in at Paragraph 15.

I. You represent you understand the risks of owning a business and specifically the risks of owning a SUBWAY® restaurant, and you are able to bear such risks. You acknowledge the success of the Restaurant will depend primarily on your own efforts and abilities and those of your employees, and you will have to work hard and use your best efforts to operate the Restaurant. You also acknowledge other factors beyond our or your control will

affect the Restaurant's success, including but not limited to, competition, demographic patterns, consumer trends, interest rates, economic conditions, government policies, weather, local laws, rules and regulations, legal claims, inflation, labor costs, lease terms, market conditions, and other conditions which may be difficult to anticipate, assess, or even identify. You acknowledge that you are subject to all federal, state and local laws relating to the franchise business. You recognize some SUBWAY® restaurants have failed and more will fail in the future. You understand that your success will depend substantially on the location you choose. You acknowledge our approval of the location for the Restaurant does not guarantee the Restaurant's success at that location and the Restaurant may lose money or fail.

J. This Agreement does not grant you any territorial rights and we and our Affiliates have unlimited rights to compete with you and to license others to compete with you.

K. YOU UNDERSTAND AND ACKNOWLEDGE THAT PARAGRAPH 14 OF THIS AGREEMENT AMENDS ANY EXISTING FRANCHISE AGREEMENTS YOU HAVE WITH US, to include the following provisions of this Agreement: Subparagraph 5.b. (regarding compliance with applicable laws and Operations Manual), Subparagraph 5.c. (regarding payment of taxes, costs and expenses, responsibility for employment practices and employees, insurance and indemnification), Subparagraph 5.f. (regarding reporting information electronically by personal computer based point-of-sale system), Subparagraph 5.l. (regarding increasing advertising contributions), Subparagraph 5.m. (regarding use of domain names), Paragraph 8 (regarding defaults and termination), Paragraph 10 (regarding dispute resolution), Subparagraph 11.f. (regarding interest and late fees), Subparagraph 11.m. (regarding no territorial rights and our unlimited right to compete), Subparagraph 11.n. (regarding compliance with anti-terrorism laws), Subparagraph 11.o. (authorization to use personal information and to conduct an investigative background search), Paragraph 13 (regarding governing law, merger clause and continuing effect), and Paragraph 17 (regarding limitation of liability).

L. YOU UNDERSTAND AND ACKNOWLEDGE ALL DISPUTES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, EXCEPT FOR CERTAIN OF OUR CLAIMS DESCRIBED IN SUBPARAGRAPH 10.d., WILL BE ARBITRATED IN CONNECTICUT, UNDER PARAGRAPH 10 BELOW, IF NOT OTHERWISE RESOLVED.

AGREEMENT:

Acknowledging the above recitals, we and you (the "parties") agree:

1. **FRANCHISE FEES.** When you sign this Agreement, you will pay us the Franchise Fee checked below, which we will not refund except as we specifically provide for below. [Check one]:

_____ a. **Standard Fee.** \$12,500. You will pay our standard fee for a first or additional franchise. We may refund your Franchise Fee if you fail to achieve a passing score on the standardized test conducted during the training program as provided in Subparagraph 5.a.(2). If you sign this Agreement, including the Specific Location Rider, we may refund your Franchise Fee as provided in Subparagraph 5.a.(1) of this Agreement as amended by the Specific Location Rider.

_____ b. **Reduced Fee.** \$6,000. (i) You represent you are currently a SUBWAY® franchisee and all of your franchises are in substantial compliance as defined in the Operations Manual (referenced in Subparagraph 5.b.) and there are no defaults under any Franchise Agreements; or (ii) you are purchasing the franchise for a location you operate as a unit of a convenience store, gasoline retailer or other minimum fifty (50) unit chain or of a co-branding partner we have approved, or you are a member of an approved organization with at least one hundred (100) potential restaurant locations, and you represent you are in good standing with the chain or the organization. If you are purchasing a franchise for a non-traditional location under clause (ii), we may disapprove the location within ninety (90) days, terminate this Agreement and refund the Franchise Fee. If any of these representations are not true (based upon the most recent store evaluation) when the Restaurant opens, you agree to pay an additional \$6,500.

_____ c. **Extension Fee.** \$1,000. You previously signed a Franchise Agreement and paid a Franchise Fee but did not sign a Sublease in the time permitted. The original Franchise Agreement is replaced by this Agreement. You agree to sign a Sublease within two (2) years with no right to any extension.

_____ d. **Satellite Fee.** \$1,500. You will operate the Restaurant as a limited restaurant supported by an existing Base Restaurant. This Agreement for the Restaurant, including the Satellite Rider, is the separate Franchise Agreement for the satellite restaurant. We will refund the Franchise Fee for the satellite restaurant as provided in Subparagraph 5.a.(1) of this Agreement as amended by the Satellite Rider.

_____ e. **Add On Fee.** \$8,500. Individuals who are existing SUBWAY® franchisees represent their franchises are in substantial compliance with the Operations Manual and there are no defaults under any Franchise Agreements. The Franchise Fee is the reduced Franchise Fee of \$6,000 plus an add-on fee of \$2,500 to add individuals who are not SUBWAY® franchisees. If the representations of the existing franchisees are not true when a lease is signed,

you agree to pay an additional \$4,000. We may refund your add-on fee of \$2,500 if an individual is added to this Agreement and fails to achieve a passing score on our standardized test conducted during the training program as provided in Subparagraph 5.b.(2).

____ f. **School Lunch.** \$0. A school board, school district, municipality or institutional food service provider (or its nominee), or an individual existing franchisee is signing this Agreement to establish a restaurant in a school (grades K-12). This Agreement includes the School Lunch Rider.

XX g. **Transfer.** \$0. Franchise No. 1878 owned by Rachna Sachar ("Seller") was transferred to you. (Seller may have paid a transfer fee.) The Seller's Franchise Agreement is replaced by this Agreement.

____ h. **Amendment or Renewal.** \$0. This Agreement replaces and/or renews the Franchise Agreement dated _____.

2. ROYALTY PAYMENTS. You will pay us weekly a Royalty equal to eight percent (8%) of the gross sales from the Restaurant and each sandwich restaurant you operate throughout the term of this Agreement. "Gross sales" means all sales or revenues, including catering and delivery, from your business exclusive of Sales Tax (as defined in Subparagraph 5.c.).

3. PERMITTED ACCESS TO THE SYSTEM AND MARKS. We grant to you during the term of this Agreement:

- a. Continued access to the System, including the loan of a copy of the Operations Manual.
- b. Continued access to information pertaining to new developments, improvements, techniques and processes in the System.
- c. A limited, non-exclusive license to use the Marks in connection with the operation of the Restaurant at one (1) location at a site we and you approved.

4. OUR OBLIGATIONS. We will provide you during the term of this Agreement:

- a. A training program for establishing and operating a restaurant using the System, at a location we choose. You will pay all transportation, lodging, and other expenses to attend the training program.
- b. A representative or development agent of ours to call on during our representative's or development agent's normal business hours for consultation concerning the operation of the Restaurant.
- c. A program of assistance, including periodic consultations with our representative or development agent in a location we choose; a newsletter advising of new developments and techniques in the System; and access during their normal business hours to specified office personnel you may call for consultations concerning the operation of the Restaurant.

5. YOUR OBLIGATIONS. You agree to do the following:

- a. In regards to the Sublease for the Restaurant:
 - (1) You will sign a Sublease for the Restaurant ("Sublease") within two (2) years after signing this Agreement. If you do not, this Agreement will automatically expire unless you i) request and are granted an extension, ii) pay an extension fee of \$1,000 US, and iii) sign our then current franchise agreement.
 - (2) Before opening, you must successfully complete the training program we provide under Subparagraph 4.a. You may be required to achieve a passing score on our standardized test conducted on the first day of the training program. If you fail to achieve a passing score, you will have the option to take one final retest. If you fail to achieve a passing score on the final retest, you may be dismissed from the training program and your Franchise Fee will be refunded. If more than one individual signs this Agreement, any one of the individuals who does not achieve a passing score on the test may be dismissed from the training program, removed from this Agreement and the Franchise Fee will not be refunded. We will not reimburse you for your travel expenses.
 - (3) The Restaurant will be at a location found by you and approved by us. We or an Affiliate we designate will lease the premises and sublet them to you. We or our designee will attempt to secure a fair rent for the premises but we cannot represent it will be the best available rent in your area. If you materially breach this Agreement or the lease, we or our designee may terminate the Sublease with you after giving the notice required in the Sublease.

(4) After you sign the Sublease, you will construct, equip, and open the Restaurant to the specifications contained in the Operations Manual.

b. You will operate your business in compliance with applicable laws and governmental regulations, including, but not limited to, those concerning labor, taxes, health, and safety. You will obtain and keep in force, at your expense, any permits, licenses, registrations, certifications or other consents required for leasing, constructing, or operating the Restaurant. Upon request, you will forward to us copies of any documentation relating to these items.

You will operate the Restaurant in accordance with our Operations Manual (the "Operations Manual"), which contains mandatory and suggested specifications, standards and operating procedures, which may be updated from time to time as a result of experience, or changes in the law or marketplace. You will make, at your sole expense, changes necessary to conform to the Operations Manual, including, but not limited to, repairing items not in good condition or not functioning properly, and upgrading and remodeling the Restaurant, including leasehold improvements, furniture, fixtures, equipment, and signs. You acknowledge these requirements are necessary and reasonable to preserve the identity, reputation, and goodwill we developed and the value of the franchise. You agree to make the repairs and the updates, and pay all reasonable, required costs within reasonable time periods we establish. You will adhere to quality control standards we prescribe in the Operations Manual or elsewhere with respect to the character or quality of the products you will sell or the services you will perform in association with the Marks. You may be required to purchase all of your beverage products from one supplier we designate. You must respond to and satisfy all customer complaints. If you fail to operate the Restaurant in accordance with the Operations Manual, we may terminate this Agreement under Subparagraphs 8.a. and 8.b. In lieu of termination, we may impose a fine for each day the Restaurant is not in compliance with the Operations Manual to compensate us for damages and for costs we incur to compel you to bring the Restaurant into compliance. The Operations Manual, as amended from time to time, is intended to further the purposes of this Agreement and is specifically incorporated into this Agreement. The Operations Manual constitutes a confidential trade secret and will remain our property. You may not, and you may not allow others to, reproduce or photocopy the Operations Manual, in whole or in part, without our written consent. You will not conduct any business or sell any products at the Restaurant other than the business and products we approve for the location.

c. You will be solely responsible for all costs of building and operating the Restaurant, including, but not limited to, sales or use tax, goods and services tax, gross receipts tax, excise tax or other similar tax ("Sales Tax"), other taxes, fees, customs, stamp duty, other duties, governmental registrations, construction costs and permits, equipment, furniture, fixtures, signs, advertising, insurance, food products, labor, utilities, and rent. We will not have any liability for these costs. You will pay any Sales Tax imposed by law on the Franchise Fee, Royalty, advertising fees, and any other amounts payable under this Agreement, whether assessed on you or on us. If we must make the payment to the taxing jurisdiction for any Sales Tax that is your responsibility under this Agreement, we will pass the amount on to you and you will reimburse us. You must register to collect and pay Sales Taxes before you open the Restaurant, and you must maintain these registrations during the term of this Agreement. You will recruit, hire, train, terminate, and supervise all Restaurant employees, set pay rates, and pay all wages and related amounts, including any employment benefits, unemployment insurance, withholding taxes or other sums, and we will not have any responsibility for these matters.

The insurance you must obtain and maintain includes, but is not limited to, statutory worker's compensation in the minimum amount required by law, comprehensive liability insurance, including products liability coverage, in the minimum amount of \$2,000,000, and business vehicle coverage, including owned vehicle liability and non-owned vehicle liability coverage, in the minimum amount of \$1,000,000. You will keep all insurance policies in force for the mutual benefit of the parties. All insurance policies must name as additional insureds, us, our Affiliates, our Development Agent assigned to the Restaurant (the "Development Agent"), and our agents, representatives, shareholders, directors, officers and employees, and those of our Affiliates and the Development Agent (the "Additional Insureds"), with such coverage being primary coverage. Your insurance company must agree to give us at least twenty (20) days' prior written notice of termination, expiration, material modification, or cancellation of your policy, or cancellation of any of the Additional Insureds as an additional insured. You agree to defend, indemnify, and save harmless, the Additional Insureds, from and against all liability, injury, loss, cost and expense of any type (including lawyers' fees), and damages that arise in or in connection with your operation of the Restaurant, regardless of cause or any fault or negligence (including sole or concurrent negligence) by the Additional Insureds, which indemnification will not be relieved by any insurance you carry. You acknowledge we may modify or increase the insurance requirements during the term of this Agreement due to changes in experience, and you agree to comply with the new requirements. You acknowledge we may from time to time designate one or more approved insurance brokers or companies under a master insurance program we establish for franchisees generally, and you must purchase your coverage from one of the approved insurance brokers or companies.

d. You will not own or operate, or assist another person to own or operate, any other business anywhere, directly or indirectly, during the term of this Agreement, which is identical with or similar to the business reasonably contemplated by this Agreement, except as our authorized representative or as our duly licensed

franchisee at a location we approve. You agree to pay us \$12,500 for each business you own or operate in violation of this Subparagraph, plus eight percent (8%) of its gross sales, as being a reasonable pre-estimate of the damages we will suffer. We may also seek to enjoin your activities under Subparagraph 10.d.

e. You will sign and deliver to us appropriate electronic funds transfer preauthorized draft forms (or forms serving the same purpose) for the Restaurant's checking account before you open the Restaurant. By signing these forms, you authorize us to withdraw money from the account on a timely basis to collect the appropriate Royalty, contributions to the Subway Franchisee Advertising Fund Trust, interest, late fees, and other charges that you will owe, under this Agreement or under any other Franchise Agreement you have with us. You authorize us to collect amounts you owe to the Subway Franchisee Advertising Fund Trust under our own name, for unpaid advertising contributions.

f. You will report your gross sales by telephone, facsimile, electronically, or by other means we permit, within two (2) days after the end of the business week (currently Tuesday). You will submit weekly summaries showing results of the Restaurant's operations by the following Saturday, in writing or in electronic form, as we permit, to locations we designate. You will use and maintain at the Restaurant a personal computer based point-of-sale system and software compatible with our requirements and an address to send and receive electronic mail and attachments on the Internet and access to the World Wide Web. You agree to install additions, substitutions, and upgrades to the hardware, software, and other items to maintain full operational efficiency and to keep pace with changing technology and updates to our requirements. You will record all sales and designated business information in your system in the manner we specify in the Operations Manual. You will report your information to us electronically at weekly or other intervals we specify. You also agree we may call up or poll your system to retrieve the information at any time. We may estimate gross sales if you fail to report on time. We may withdraw money from your checking account for Royalty and advertising contributions under the above Subparagraph, for the amounts then due based on reported or estimated sales. We will adjust charges based on estimated gross sales after we determine actual sales.

g. You will allow our representatives and our development agent and our development agent's representatives to enter your business premises without prior notice during regular business hours to inspect, audit, photocopy, and videotape your business operations and records, and to interview the Restaurant's employees and customers. You will keep all of the following at the Restaurant for a period of three (3) years: cash register tapes, control sheets, weekly inventory sheets, deposit slips, bank statements and canceled checks, sales and purchase records, business and personal tax returns, and accounting records. You also grant us permission to examine without prior notice to you, all records of any supplier relating to your purchases.

h. You will pay us, if we or our representatives determine that you under-reported gross sales, all Royalty, advertising contributions and other charges due on the gross sales that were not reported, plus interest and the late fee as provided in Subparagraph 11.f. If reported gross sales for any calendar year are less than ninety-eight percent (98%) of the actual gross sales for that period, you will reimburse us for all costs of the investigation that discovered the under-reporting, including salaries, outside accountant fees, travel, meals, and lodging. You agree to pay for all costs of any audit that did not occur due to your failure to produce your books and records at the time of audit if we notified you in writing of the audit at least five (5) days before the scheduled date. If you fail to submit all of your information to be audited, we may estimate your sales and charge you.

i. You will pay weekly into the Subway Franchisee Advertising Fund Trust ("SFAFT"), four and one-half percent (4 1/2%) of gross sales of the Restaurant. At any time, franchisees may temporarily or permanently increase the advertising percentage for either the country or any market designated by SFAFT by a two-thirds (2/3) vote on the basis of one (1) vote for each operating restaurant. We and our Affiliates or another entity acting on behalf of our franchisees may negotiate advertising contributions and programs with suppliers. We or our Affiliate may designate that advertising contributions be forwarded to SFAFT or be placed into an advertising fund to be spent at our or our Affiliate's complete unrestricted discretion for the benefit of franchisees. You acknowledge advertising contributions may not benefit franchisees in any area in proportion to the amounts they paid.

j. You will not place "For Sale" or similar signs at or in the general vicinity of the Restaurant or use any words in any advertising that identify the business offered for sale as a SUBWAY® restaurant.

k. You will make prompt payment of all charges you owe to us, our Affiliates, your vendors, and the landlord of the premises, in addition to Royalty and advertising contributions to SFAFT, and pay all Sales Tax, other taxes, and debts of the Restaurant as they become due.

l. You will use or display the Marks on materials and stationery used in connection with the Restaurant only as we permit and as provided in this Agreement or in the Operations Manual. You will display the following notice in a prominent place at the Restaurant: *"The SUBWAY® trademarks are owned by Doctor's Associates, Inc. and the independent franchisee operator of this restaurant is a licensed user of such trademarks."*

m. You will operate and promote the Restaurant under the name SUBWAY® or other name we direct without prefix or suffix added to the name. You will not use the word "SUBWAY" as part of a corporate or other business name. You will not license or purchase vehicles, fixtures, products, supplies or equipment, or incur any obligations except in your individual, corporate or other business name. Any sign face bearing the name SUBWAY® will remain our property even though you may have paid a third party to make the sign face. You will not establish a local domain name for a website using the word "SUBWAY" without our prior written authorization. The domain name must be registered under the name of DAI. We will require you to cancel your registration of the domain name if you fail to obtain our prior written authorization. At our request, you must remove any inappropriate information we deem not to be in the best interest of the SUBWAY® franchise system. All present or future goodwill associated with the Marks belongs to us. You agree not to contest the validity or ownership of any of the Marks, or to assist any other person to do so. You agree you do not have and you will not acquire any ownership rights in the Marks, and you will not register or attempt to register any of the Marks. You agree to assign and transfer to us your rights in or registrations of the Marks that you have or may have. All references to the Marks in this Agreement include any additional or replacement Marks associated with the System that we authorize you to use.

n. You will always indicate your status as an independent franchised operator and franchisee to others and on any document or information released by you in connection with the Restaurant.

6. RELOCATION OF THE RESTAURANT. You may relocate the Restaurant only with our prior written approval. If the lease expires and is not renewed, or if the landlord terminates the lease, you will have one (1) year to relocate the Restaurant provided you did not breach the Sublease. You will pay all expenses and liabilities to terminate the lease and move if you relocate the Restaurant. If you materially breach this Agreement, we or our designee may cancel the Sublease with you after giving the notice required in the Sublease.

7. TERM OF AGREEMENT. If, under local law, this Agreement must be registered then it will not become effective until it is. The term of this Agreement is twenty (20) years from the date of this Agreement and will automatically renew for additional twenty (20) year periods unless either party chooses not to renew and sends written notice to the other at least six (6) months before the expiration of any twenty (20) year period. Upon renewal you have the option to either i) continue under the terms of this Agreement and the royalty rate will increase to ten percent (10%) with all other terms and conditions of this Agreement remaining the same, or ii) you may sign our then current Franchise Agreement which will replace this Agreement and which may contain terms or conditions that differ from this Agreement, including financial terms, except for the royalty rate which will remain at eight percent (8%). This Agreement will be automatically renewed under option i) unless you send written notice of your intent to renew under option ii) at least six (6) months prior to expiration of this Agreement. There will be no renewal fee.

8. TERMINATION AND EXPIRATION PROVISIONS.

a. If we give you ten (10) days' written notice, we may, at our option and without prejudice to any of our other rights or remedies provided under this Agreement, terminate this Agreement if (i) you abandon the Restaurant, or (ii) you fail to pay any money you owe us, our Affiliates, SFAFT, the landlord of the premises, or any amounts we may become liable to pay because of your action or omission, or (iii) you are evicted from the Restaurant location for non-payment of rent or related charges. The notice will specify the default and provide you ten (10) days to remedy the default from the date of delivery of the notice.

b. If we give you ninety (90) days' written notice, we may, at our option and without prejudice to any of our other rights or remedies provided under this Agreement, terminate this Agreement if you (i) do not substantially perform all of the terms and conditions of this Agreement not otherwise covered in Subparagraph 8.a., or (ii) you lose possession of the premises where the Restaurant is located, or (iii) you under-report your gross sales by two percent (2%) or more for a calendar year, or (iv) you become insolvent, make an assignment for the benefit of creditors or seek bankruptcy relief, either reorganization or liquidation, in any court, legal or equitable, or (v) you lose any permit or license which you need to operate the Restaurant, or (vi) you fail to comply with your duties under this Agreement or the Operations Manual. The notice will specify the default and provide you sixty (60) days to remedy the default from the date of delivery of the notice. If you cure the default within sixty (60) days, the notice will be void.

c. Beginning with a second notice of default under Subparagraph 8.a. or 8.b., we may include a clause that because of repeated cause for termination, your subsequent repeat of a given default in the next twelve (12) months will be good cause for a final termination without providing you the opportunity to remedy the default or even if you remedy the default.

d. Our waiver of any of your defaults will not constitute a waiver of any other default and will not prevent us from requiring you to strictly comply with this Agreement.

e. Upon termination or expiration of this Agreement, all of your rights under this Agreement will terminate. We have the right to repurchase the Restaurant at fair market value within thirty (30) days of termination or

expiration of this Agreement. If we do not repurchase the Restaurant, you must change the appearance of the Restaurant so it will no longer be identified as a SUBWAY® restaurant, and you must stop using the System, including the Marks, signs, colors, structures, personal computer based point-of-sale system software developed for SUBWAY® restaurants, printed goods and forms of advertising indicative of our sandwich business and return the Operations Manual to us. You are required to cancel any permits, licenses, registrations, certifications or other consents required for leasing, constructing, or operating the Restaurant. If you fail to do so within a reasonable time, we are authorized to cancel them for you. If you breach this provision, you will pay us \$250 per day for each day you are in default, as being a reasonable pre-estimate of the damages we will suffer. We may also seek to enjoin your activities under Subparagraph 10.d.

f. If any of the provisions above which permit us to terminate the franchise violate your state law, if it applies, such state law relating to termination will prevail over the offending provisions.

g. For one year after the termination, expiration or transfer of this Agreement, you will not directly or indirectly engage in, or assist another to engage in, any sandwich business within three (3) miles of any location where a SUBWAY® restaurant operates or operated in the prior year. You agree to pay us \$12,500 for each sandwich business location you are associated with in the restricted area in violation of this Subparagraph, plus eight percent (8%) of the gross sales of such location during the one (1) year period, as being a reasonable pre-estimate of the damages we will suffer. We may also seek to enjoin your activities under Subparagraph 10.d. Nothing in this Subparagraph or any other provision of this Agreement grants you any territorial or other exclusive rights.

h. You acknowledge the System includes confidential and proprietary information, including, but not limited to recipes, formulas, specifications, food preparation procedures, blueprints, vendor lists, business methods, forms and policies, marketing and development plans, advertising programs, creative materials, methods and plans, trade secrets, knowledge, techniques, and developments, information contained in the Operations Manual and the Subway to Subway publication, and all information we or our Affiliates designate as confidential ("Confidential Information"). Confidential Information will remain our property or our Affiliate's property. You will not, during or after the term of this Agreement, without our prior written consent, disclose to any unauthorized person or entity, or use for the benefit of any unauthorized person or entity, any Confidential Information. You acknowledge if you violate this provision, substantial injury could result to us, our Affiliates, you and other SUBWAY® franchisees. If you violate this provision, you will be liable to us for our damages and we may also seek to enjoin your activities under Subparagraph 10.d.

i. Upon termination or expiration of this Agreement, all telephone listings, telephone numbers, Internet addresses and domain names used by the public to communicate with the Restaurant will automatically become our property if permitted by state law. In any event, you agree not to use any telephone numbers, Internet addresses or domain names associated with the Restaurant after the termination or expiration of this Agreement.

B. TRANSFER AND ASSIGNMENT OF THE RESTAURANT.

a. You may only transfer the Restaurant with this Agreement and only with our prior written approval, as provided in this Paragraph 9. You may transfer the Restaurant and this Agreement to a natural person or persons (not a corporation), provided: (1) you first offer, in writing, to sell the Restaurant to us on the same terms and conditions offered by a bona fide third party purchaser, we fail to accept the offer within thirty (30) days, and we approve your contract with the purchaser; (2) each purchaser has a satisfactory credit rating, and is of good moral character; (3) each purchaser received a passing score on our standardized test (if not already a SUBWAY® franchisee) and attended and successfully completed our training program or agrees to attend our first available training program promptly after the sale (and then must successfully complete the training program or will be in default under the Franchise Agreement); (4) each purchaser received the required disclosure documents in accordance with our policies and federal and state laws, rules, and regulations, and signs the then current form of Franchise Agreement which will amend and replace this Agreement and may contain terms that differ from this Agreement, including financial terms, and assumes the Sublease for the Restaurant; (5) you pay in full all money you owe us, our Affiliates, and SFAFT, for all your SUBWAY® restaurants and you are not otherwise in default under this Agreement; (6) you pay us \$5,000 (plus any applicable Sales Tax) for our legal, accounting, training, and other expenses we incur in connection with the transfer; (7) you deliver a general release in favor of us, the Development Agent and our Affiliates, and agents, representatives, shareholders, partners, directors, officers, and employees of ours and of the Development Agent and our Affiliates signed by you and each purchaser; and (8) at or prior to the time of the transfer you bring the Restaurant into full compliance with our then current standards set forth in the Operations Manual. All transfer documents will be in English in a form satisfactory to us.

b. You may assign your rights under this Agreement to operate the Restaurant (but not this Agreement) to a corporation (or similar entity) provided: (1) the corporation is newly organized and its activities are confined exclusively to operating the Restaurant; (2) you are, and remain at all times, the owner of the controlling interest of the corporation; (3) the corporation delivers to us a written assumption of your obligations under this Agreement; (4) all shareholders of the corporation deliver to us a written guarantee of the full and prompt payment and

performance by the corporation of all its obligations to us under the assignment; (5) you acknowledge to us in writing that you are not relieved of any personal liability; and (6) you deliver a general release described in Subparagraph 9.a., signed by you, the corporation, and each shareholder of the corporation. You will also remain personally liable under the Sublease.

c. Your rights under this Agreement may pass to your next of kin or legatee upon your death. Each such transferee must receive a passing score on our standardized test (if not already a SUBWAY® franchisee), deliver a written assumption to us, and agree in writing to attend our next training session. Each transferee must then successfully complete our training program or will be in default under this Agreement. The transferees will also assume the Sublease in writing.

d. We may transfer and assign this Agreement without your consent, and this Agreement will inure to the benefit of our successors and assigns.

10. ARBITRATION OF DISPUTES.

a. Any dispute, controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration. The arbitration shall be administered by an arbitration agency, such as the American Arbitration Association ("AAA") or the American Dispute Resolution Center, in accordance with its administrative rules including, as applicable, the Commercial Rules of the AAA and under the Expedited Procedures of such rules or under the Optional Rules For Emergency Measures of Protection of the AAA. Judgment rendered by the Arbitrator may be entered in any court having jurisdiction thereof. The costs of the arbitration will be borne equally by the parties. The parties agree that Bridgeport, Connecticut shall be the site for all hearings held under this Paragraph 10, and that such hearings shall be before a single arbitrator, not a panel, and neither party shall pursue class claims and/or consolidate the arbitration with any other proceedings to which we are a party.

b. If you breach the terms of your Sublease, the Sublessor, whether us or our designee, may exercise its rights under the Sublease, including to evict you from the franchised location. Any action brought by the Sublessor to enforce the Sublease, including actions brought pursuant to the cross-default clause in Paragraph 6 of the Sublease (which provides that a breach of the Franchise Agreement is a breach of the Sublease), is not to be construed as an arbitrable dispute.

The parties agree that you may seek a stay of any eviction brought under the cross-default clause in Paragraph 6 of the Sublease by filing a demand for arbitration in accordance with Subparagraph 10.a. within thirty (30) days of the Sublessor's commencement of the eviction. The stay may be lifted upon conclusion of the arbitration. You may not seek a stay of eviction for any actions involving non-payment of rent or in a case where an arbitration award under the Franchise Agreement has been issued.

c. You may only seek damages or any remedy under law or equity for any arbitrable claim against us or our successors or assigns. You agree that our Affiliates, shareholders, directors, officers, employees, agents and representatives, and their affiliates, shall not be liable nor named as a party in any arbitration or litigation proceeding commenced by you where the claim arises out of or relates to this Agreement. You further agree that the foregoing parties are intended beneficiaries of the arbitration clause; and that all claims against them that arise out of or relate to this Agreement must be resolved with us through arbitration. If you name a party in any arbitration or litigation proceeding in violation of this Subparagraph 10.c., you will reimburse us for reasonable costs incurred, including but not limited to, arbitration fees, court costs, lawyers' fees, management preparation time, witness fees, and travel expenses incurred by us or the party.

d. Notwithstanding the arbitration clause in Subparagraph 10.a., we may bring an action for injunctive relief in any court having jurisdiction to enforce our trademark or proprietary rights, the covenants not to compete, or the restriction on disclosure of Confidential Information in order to avoid irreparable harm to us, our affiliates and the franchise system as a whole.

e. Any disputes concerning the enforceability or scope of the arbitration clause shall be resolved pursuant to the Federal Arbitration Act, 9 U.S.C. § et seq. ("FAA"), and the parties agree that the FAA preempts any state law restrictions (including the site of the arbitration) on the enforcement of the arbitration clause in this Agreement. If, prior to an Arbitrator's final decision, either we or you commence an action in any court of a claim that arises out of or relates to this Agreement (except for the purpose of enforcing the arbitration clause or as otherwise permitted by this Agreement), that party will be responsible for the other party's expenses of enforcing the arbitration clause, including court costs, arbitration filing fees and other costs and attorney's fees.

f. We and our Affiliates, and you and your Affiliates, will not withhold any money due to the other party and its Affiliates, under this Agreement or any other agreement. A party or its Affiliate that withholds money in violation of this provision will reimburse the party or its Affiliate whose money is withheld for the reasonable costs to collect the withheld money, notwithstanding the provisions of Subparagraph 10.a. These costs include, but are

not limited to, mediation and arbitration fees, court costs, lawyers' fees, management preparation time, witness fees, and travel expenses incurred by the party or its Affiliate or SFART, or its agents or representatives.

g. If a party (i) commences action in any court, except to compel arbitration, or except as specifically permitted under this Agreement, prior to an arbitrator's final decision, or (ii) commences any arbitration in any forum except where permitted under this Paragraph 10, or (iii) when permitted to commence a litigation proceeding, commences any litigation proceeding in any forum except where permitted under this Paragraph 10, then that party is in default of this Agreement. The defaulting party must commence arbitration (or a litigation proceeding, if permitted under this Paragraph 10), in a permitted forum prior to any award or final judgment. The defaulting party will be responsible for all expenses incurred by the other party, including lawyers' fees. Subject to federal or state law, if a party defaults under any other provision of this Paragraph 10, or under any provision of Paragraph 17 or Paragraph 18, including, but not limited to, making a claim for special, incidental, consequential, punitive, or multiple damages, or damages in excess of the amount permitted under this Agreement, or you name a person or entity in any arbitration or legal proceeding other than us, the defaulting party must correct its claim. The defaulting party will be responsible for all expenses incurred by the other party, or the improperly named persons or entities, including lawyers' fees, and will be liable for abuse of process.

11. OBLIGATIONS OF THE PARTIES. The parties also agree as follows:

a. You are, and will at all times be identified as, a natural person and an independent contractor. You are not our agent, partner, or employee. This Agreement does not create a partnership, joint venture, agency, or fiduciary relationship.

b. All or any part of your rights and privileges under this Agreement will return to us if for any reason you abandon, surrender, or suffer revocation of your rights and privileges.

c. If, for any reason, any court, agency, or tribunal with valid jurisdiction in a proceeding to which we are a party, decides in a final, non-appealable ruling, that a portion of this Agreement is contrary to, or in conflict with any applicable present or future law, rule, or regulation, after giving such portion the broadest legal interpretation possible, then that portion will be invalid and severable. The remainder of this Agreement will not be affected and will continue to be given full force and effect. Any invalid portion will be deemed not to be a part of this Agreement as of the date the ruling becomes final if you are a party to the proceedings, or upon your receipt of notice of nonenforcement from us. If a court, agency, or tribunal decides a covenant not to compete is too broad as to scope, time, or geographic area, the parties authorize the court, agency or tribunal to modify the covenant to the extent necessary to make it enforceable.

d. No previous course of dealing or usage in the trade not specifically set forth in this Agreement will be admissible to explain, modify, or contradict this Agreement.

e. The parties will give any notice required under this Agreement in writing, and will send it by certified mail, registered mail or by a mail service which uses a tracking system, such as Airborne Express or Federal Express. We will address notices to you at the Restaurant or at your home until you designate a different address by written notice to us. You must notify us of any address changes, including changes to your electronic mail address. You will address notices to us to Doctor's Associates Inc., 325 Bic Drive, Milford, CT 06460-3059, Attention Legal Department. Any notice will be deemed given at the date and time it is received, or refused, or delivery is made impossible by the intended recipient.

f. If your payment is more than one (1) week late you will pay a late fee equal to ten percent (10%) on any Royalty, advertising contributions, or other charges you will owe us under this Agreement. Also, you will pay interest on all your past-due accounts at up to eighteen percent (18%), but the late fee and interest will not be greater than the maximum rate allowed by law in the state in which our principal office is located or the Restaurant is located, whichever is higher.

g. You must immediately notify us of any infringement of or challenge to your use of any of the Marks, or claim by any person of any rights in any of the Marks. We will indemnify you for all damages for which you are held liable in any proceeding arising out of the use of any of the Marks in compliance with this Agreement, provided you notify us promptly, cooperate in the defense of the claim, and allow us to control the defense of the action. If a third party challenges any of the Marks claiming infringement of alleged prior or superior rights in the Mark, we will have the option and right to modify or discontinue use of the Mark and adopt substitute Marks in your geographical business areas and in other areas we select. Our liability to you under such circumstances will be limited to your cost to replace signs and advertising materials. You acknowledge and agree we have the exclusive right to pursue any trademark infringement claims against third parties.

h. If we must purchase the Restaurant's equipment, leasehold improvements, or both, under any applicable state law, rule, regulation, or court decision, if we terminate this Agreement, the purchase price will be your original cost, less depreciation and amortization, based on a five (5) year life under the straight-line method.

i. If the landlord terminates the lease for the Restaurant and an arbitrator or court determines you did not breach the Sublease and it was our fault or our Affiliate's fault the landlord terminated the lease, our obligation to you will be limited to the original cost of your leasehold improvements, less depreciation based on a five (5) year life under the straight-line method. We will pay you when you reopen the Restaurant in a new location. If the arbitrator or court determines you breached the Sublease or it was not our fault or our Affiliate's fault the landlord terminated the lease, we and our Affiliate will have no obligation to you for termination of the lease.

j. If we are in default under this Agreement, you may give us written notice by certified mail, registered mail or by a mail service which uses a tracking system, such as Airborne Express or Federal Express, within ninety (90) days of the start of the default clearly stating each act or omission constituting the default. If we do not cure the default to your satisfaction within sixty (60) days after we receive your notice, you may give us notice that an arbitrable dispute exists. The parties will work diligently to attempt to resolve the arbitrable dispute in accordance with Paragraph 10.

k. You will pay us Sales Tax or other tax assessed on all payments you make to us that we must collect from you or pay ourselves to the taxing authority.

l. You will pay us any applicable Sales Tax or other tax on behalf of the local taxing authority at the same time and in the same manner you pay for the taxable goods or services, whether or not the requirement is specifically stated in this Agreement.

m. You understand and acknowledge this Agreement does not grant you any territorial rights and there are no radius restrictions or minimum population requirements which limit where we can license or open another SUBWAY® restaurant, unless provided under applicable state law. We and our Affiliates have unlimited rights to compete with you and to license others to compete with you. You understand and acknowledge we and our Affiliates retain the exclusive unrestricted right to produce, distribute, and sell food products, beverages, and other products, under the SUBWAY® mark or any other mark, directly and indirectly, through employees, representatives, licensees, assigns, agents, and others, at wholesale, retail, and otherwise, at any location, without restriction by any right you may have, and without regard to the location of any SUBWAY® restaurant, and these other stores or methods of distribution may compete with the Restaurant and may adversely affect your sales. You do not have any right to exclude, control, or impose conditions on the location or development of any SUBWAY® restaurant, other restaurant, store or other method of distribution, under the SUBWAY® mark or any other mark.

n. You acknowledge it is our intent to comply with all anti-terrorism laws enacted by the US Government. You further acknowledge that we may not carry on business with anyone officially recognized by the US Government as a suspected terrorist or anyone otherwise associated directly or indirectly with terrorist activities. The parties agree that if, at any time during the term of this Agreement, it is determined that you are a suspected terrorist or otherwise associated directly or indirectly with terrorist activities, that this Agreement will be terminated immediately. You acknowledge that you are not now, and have never been a suspected terrorist or otherwise associated directly or indirectly with terrorist activity, including but not limited to, the contribution of funds to a terrorist organization. You further acknowledge that it is not your intent or purpose to purchase a SUBWAY® franchise to fund or participate in terrorist activities.

o. You authorize us, for business purposes relating to the administration of this Agreement and the operation of the System (the "Purposes"), to use your information which may include, but is not limited to your name, business or home address, business or home telephone number, email address and business records ("Your Information"). You understand and acknowledge that we may disclose Your Information to the following third parties for use in connection with the Purposes: vendors, your local independent purchasing cooperative or corporation, and the chainwide and local SFAFT. In addition, we will disclose Your Information including to prospective and existing franchisees and government agencies through disclosure in our Offering Circular. We will also honor validly served subpoenas, warrants and court orders. You further acknowledge that, from time to time, circumstances may arise where we are required to conduct an investigative background search. You authorize us or our designee to conduct such an investigative background search, as necessary, which may reveal information about your business experience, educational background, criminal record, civil judgments, property ownership, liens, association with other individuals, creditworthiness and job performance.

12. TERMS, REFERENCES AND HEADINGS. All terms and words in this Agreement will be deemed to include the correct number, singular or plural, and the correct gender, masculine, feminine, or neuter, as the context or sense of this Agreement may require. Each individual signing this Agreement as the franchisee will be jointly and severally liable. References to "you" will include all such individuals collectively and individually. References to dollars (\$) in this Agreement refer to the lawful money of the United States of America. The paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.

13. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the substantive laws of the State of Connecticut, without reference to its conflicts of law, except as may otherwise be provided in this Agreement. The parties agree any franchise law or business opportunity law of the State of Connecticut, now in effect, or adopted or amended after the date of this Agreement, will not apply to franchisees located outside of Connecticut. This Agreement, including the Recitals and all exhibits, contains the entire understanding of the parties and supersedes any prior written or oral understandings or agreements of the parties relating to the subject matter of this Agreement. The parties may not amend this Agreement orally, but only by a written agreement, except we may amend the Operations Manual from time to time as provided in this Agreement. The provisions of this Agreement which by their terms are intended to survive the termination or expiration of this Agreement, including, but not limited to, Subparagraphs 5.c., 5.h., 5.k., 8.d., 8.e., 8.g., 8.h., 11.b., 11.h., 11.i., 11.m. and 11.n., and Paragraphs 10, 13, 14, 15, 16, 17, and 19, will survive the termination or expiration of this Agreement.

14. AMENDMENT OF PRIOR AGREEMENTS. The parties want to encourage advertising cooperation and franchisee compliance, provide for amicable, timely, and cost effective resolution of Disputes with limitations on liability, and clarify certain provisions of existing Franchise Agreements. To achieve these goals, this Agreement has revised provisions regarding payment of taxes, costs and expenses, responsibility for employment practices and employees, insurance, indemnification, increasing advertising contributions, reporting information electronically by personal computer based point-of-sale system, defaults and termination, interest and late fees, dispute resolution, no territorial rights and our unlimited right to compete, governing law, merger clause, continuing effect, and limitation of liability. You agree to accept the provisions set forth in Subparagraph 5.b., Subparagraph 5.c., Subparagraph 5.f., Subparagraph 5.l., Subparagraph 5.m., Paragraph 8., Paragraph 10., Subparagraph 11.f., Subparagraph 11.m., Subparagraph 11.n., Subparagraph 11.o., Paragraph 13., and Paragraph 17 in this Agreement, for this Agreement and to the amendment of all your other existing Franchise Agreements with us to include these provisions (if the existing Franchise Agreements do not already include these provisions). **EACH OF YOU SIGNING THIS AGREEMENT AS FRANCHISEE ACKNOWLEDGES AND UNDERSTANDS THAT THIS PARAGRAPH 14 AMENDS ALL YOUR EXISTING FRANCHISE AGREEMENTS WITH US, AND ANY SUCH AMENDMENT WILL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.** This Paragraph 14 amends any existing Franchise Agreement you have if every individual who signed the existing Franchise Agreement as franchisee signs this Agreement or another Franchise Agreement containing the provisions of this Paragraph 14.

15. RELEASE. You acknowledge no employee, agent, or representative of ours, or our Affiliates, or our development agents, has made any representations to you, and you have not relied on any representations, except for the representations contained in this Agreement, the Offering Circular, and our advertising materials, and except those you have written in below:

16. NO PRIOR CLAIMS. You represent that as of the date of this Agreement, you have no claims of any type against us, our Affiliates, or the Development Agent, or our agents, representatives, shareholders, directors, officers, and employees, or those of our Affiliates and the Development Agent, except those you have written in below:

You hereby release each of these individuals and entities from all claims other than those you listed above. You acknowledge and understand that any list of claims and the general release will include any alleged breaches of franchise or other laws, and any alleged breach of agreement, relating not only to this Agreement, but also to any other franchise you have or had with us at any time.

17. LIMITATIONS ON DAMAGES. EACH PARTY HEREBY WAIVES, WITHOUT LIMITATION, ANY RIGHT IT MIGHT OTHERWISE HAVE TO ASSERT A CLAIM FOR AND/OR TO RECOVER LOST PROFITS AND OTHER FORMS OF CONSEQUENTIAL, INCIDENTAL, CONTINGENT, PUNITIVE AND EXEMPLARY DAMAGES FROM THE OTHER EXCEPT AS PROVIDED HEREIN. EACH PARTY'S LIABILITY SHALL BE LIMITED TO ACTUAL COMPENSATORY DAMAGES. ACTUAL COMPENSATORY DAMAGES SHALL BE THE GREATER OF (1) \$100,000.00,

OR (2) AT YOUR SOLE OPTION, ALL AMOUNTS PAID TO US FOR FRANCHISE FEES AND ROYALTIES FOR THIS AGREEMENT FOR UP TO THREE YEARS PRECEDING THE DATE OF ANY AWARD HEREIN. IF YOU CHOOSE OPTION (2), WE WILL ALSO REPURCHASE YOUR EQUIPMENT, PURCHASED FROM OR THROUGH US, AT DEPRECIATED VALUE USING THE FIVE YEAR, STRAIGHT LINE METHOD OF CALCULATION. EACH PARTY ACKNOWLEDGES THAT IT HAS HAD A FULL OPPORTUNITY TO CONSULT WITH COUNSEL CONCERNING THIS WAIVER, AND THAT THIS WAIVER IS INFORMED, VOLUNTARY, INTENTIONAL, AND NOT THE RESULT OF UNEQUAL BARGAINING POWER.

18. WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES, WITHOUT LIMITATION, ANY RIGHT IT MIGHT OTHERWISE HAVE TO TRIAL BY JURY ON ANY AND ALL CLAIMS ASSERTED AGAINST THE OTHER. THIS WAIVER IS EFFECTIVE EVEN IF A COURT OF COMPETENT JURISDICTION DECIDES THAT THE ARBITRATION PROVISION IN PARAGRAPH 10 IS UNENFORCEABLE, EACH PARTY ACKNOWLEDGES THAT IT HAS HAD A FULL OPPORTUNITY TO CONSULT WITH COUNSEL CONCERNING THIS WAIVER, AND THAT THIS WAIVER IS INFORMED, VOLUNTARY, INTENTIONAL, AND NOT THE RESULT OF UNEQUAL BARGAINING POWER. EACH PARTY AGREES THAT ANY SUCH TRIAL SHALL TAKE PLACE IN A COURT OF COMPETENT JURISDICTION IN CONNECTICUT.

19. CONSENT TO TERMS OF AGREEMENT. You acknowledge you read and understand this Agreement, including any addenda and exhibits, and you agree to be bound by all of its terms and conditions.

20. ACKNOWLEDGEMENT. YOU ACKNOWLEDGE NO REPRESENTATIONS HAVE BEEN MADE TO YOU EXCEPT THOSE SET FORTH IN THIS AGREEMENT, THE OFFERING CIRCULAR, AND OUR ADVERTISING MATERIALS; AND YOU HAVE NO CLAIMS OF ANY TYPE AGAINST US, OUR AFFILIATES, THE DEVELOPMENT AGENT, OR OUR AGENTS, REPRESENTATIVES, SHAREHOLDERS, DIRECTORS, OFFICERS AND EMPLOYEES, OR THOSE OF OUR AFFILIATES AND THE DEVELOPMENT AGENT, EXCEPT ANY REPRESENTATIONS OR CLAIMS YOU WROTE IN THE SPACES PROVIDED IN PARAGRAPHS 15 AND 16.

IN WITNESS WHEREOF, the parties have executed this Agreement, as of the date first written above.

FRANCHISEE(S)

Waqas Saleemi
Franchisee Waqas M. Saleemi
Farooq S. Sharyar
Franchisee Farooq S. Sharyar

DOCTOR'S ASSOCIATES INC.

By: [Signature]
Duly Authorized
Title: _____

Franchisee

Franchisee



DOCTOR'S ASSOCIATES INC. 325 Bldg Drive Milford CT 06460-3059 (203) 877-4281

Franchise # 1878

ADDENDUM TO THE FRANCHISE AGREEMENT

This Rider dated March 2, 2004 amends and supplements the Franchise Agreement dated March 2, 2004 between Doctor's Associates Inc., a Florida corporation ("we"), and Waqas M. Saleemi and Farooq S. Sharyar ("you").

AGREEMENT:

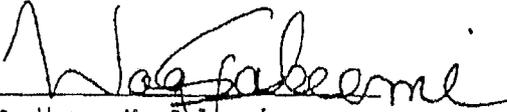
The parties amend and supplement the Franchise Agreement as follows:

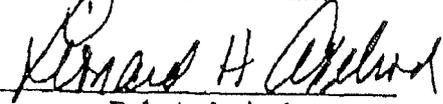
1. Paragraph 9.a. is amended by adding the following at the end:

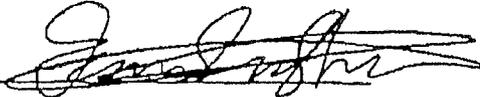
We will not unreasonably withhold our consent to transfer.

2. The Franchise Agreement, as amended and supplemented by this Rider, contains the entire understanding of the parties and may not be further amended except in writing. The Franchise Agreement, as amended and supplemented by this Rider, is ratified and affirmed.
3. You acknowledge you read and understand this Rider and the Franchise Agreement and consent to be bound by all the terms and Conditions of the Franchise Agreement as amended and supplemented by this Rider.

IN WITNESS WHEREOF, the parties have executed this Rider as of the date first written above.


Franchisee Waqas M. Saleemi

Doctor's Associates Inc.

Duly Authorized


Franchisee Farooq S. Sharyar

Franchisee

ADDENDUM TO THE OFFERING CIRCULAR AND FRANCHISE AGREEMENT
FOR THE STATE OF WASHINGTON

THIS ADDENDUM TO THE OFFERING CIRCULAR AND FRANCHISE AGREEMENT is agreed to this 2nd day of March, 2004, between Doctor's Associates Inc. and Waqas M. Saleemi and Farooq S. Sharyar to amend and revise the Offering Circular and Franchise Agreement as follows:

Item 19 of the Offering Circular is amended by deleting the third, fourth and fifth paragraphs.

These states have statutes which may supersede the Franchise Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise: ARKANSAS (Stat. Section 70-807), CALIFORNIA (Bus. & Prof. Code Sections 20000-20043), CONNECTICUT (General Stat. Section 42-133e et seq.), DELAWARE (Code, tit.), HAWAII (Rev. Stat. Section 482E-1), ILLINOIS (815 ILCS 705/19 and 705/20), INDIANA (Stat. Section 23-2-2.7), MICHIGAN (Stat. Section 19.854(27)), MINNESOTA (Stat. Section 80C.14), MISSISSIPPI (Code Section 75-24-51), MISSOURI (Stat. Section 407.400), NEBRASKA (Rev. Stat. Section 8-401), NEW JERSEY (Stat. Section 56:10-1), SOUTH DAKOTA (Codified Laws Section 37-5A-51), VIRGINIA (Code 13.1-557-574-13.1-564), WASHINGTON (Code Section 19.100.180), WISCONSIN (Stat. Section 135.03). These and other states may have court decisions which may supersede the Franchise Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration involving a franchise purchased in Washington, the arbitration site shall be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

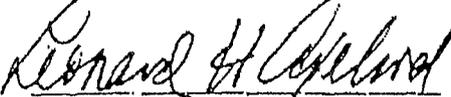
In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

A release or waiver of rights executed by a franchisee shall not include rights under the Washington Franchise Investment Protection Act except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.

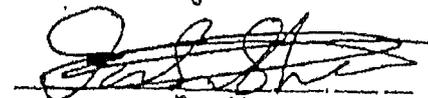
Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting the transfer.

The undersigned does hereby acknowledge receipt of this addendum.

DOCTOR'S ASSOCIATES INC.


Duly Authorized


Franchisee Waqas M. Saleemi


Franchisee Farooq S. Sharyar

Franchisee

Franchisee

Schedule A-1

FRANCHISE #14570

DATE EXECUTED June 14, 2006

FRANCHISE AGREEMENT

DOCTOR'S ASSOCIATES INC.

with

Waqas Saleemi

Farooq Sharyar

FTC
04/01/06

FRANCHISE AGREEMENT

This Franchise Agreement (this "Agreement") is made June 14, 2006 between Doctor's Associates Inc., a Florida corporation with a principal office in Fort Lauderdale, Florida ("we" or "us"), and Waqas Saleem and Farooq Sharar of WA ("you"), for one (1) SUBWAY® restaurant (the "Restaurant") to be located within the territory of Development Agent Ethan Golf (the "DA") or the DA's successor(s), under DA contract number 580, as specified in Item 2 of the DAI Offering Circular in effect as of the date of this Agreement

RECITALS

A. We own a proprietary system for establishing and operating restaurants featuring sandwiches and salads under our trade name and service mark SUBWAY® (the "System"). We developed the System spending considerable money, time, and effort. The System includes the trademark SUBWAY®, other trademarks, trade names, service marks, commercial announcements (slogans) and related insignia (logos) we own (the "Marks"). The System also includes goodwill associated with the Marks, trade dress, recipes, formulas, food preparation procedures, business methods, forms, policies, trade secrets, knowledge and techniques.

B. We operate and franchise others to operate SUBWAY® restaurants using the System, including the Marks.

C. You want access to the System to establish and operate the Restaurant at a location you select and we approve

D. You acknowledge the System includes confidential and proprietary information which we, our Affiliates (defined below), and the development agents, franchisees and agents of us or our Affiliates, will give you to use only to establish and operate the Restaurant. An "Affiliate" means a person or entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another person or entity.

E. We have granted, and will continue to grant, access to the System to others to establish and operate SUBWAY® restaurants. Our goal is to be the number one quick service restaurant system in every market we enter and we plan to open many more outlets in all markets that we choose to develop. This Agreement does not grant you the right to own additional SUBWAY® restaurants. You acknowledge we do not have to sell you additional franchises or consent to your purchase of existing franchises.

F. You acknowledge the only consideration we receive from you for granting you the license to use the System consists of the Franchise Fee, the Royalty and performance of your other promises under this Agreement

G. You acknowledge you personally received our Franchise Offering Circular and its exhibits, including this Agreement (the "Offering Circular"), at or prior to your first personal meeting with our employee, development agent, agent, or representative and at least ten (10) business days before you signed this Agreement, and you signed a Receipt for the Offering Circular. You represent you carefully reviewed the Offering Circular and had enough time to consult with a lawyer, accountant, or other professional advisor, if you wanted, and you understand and agree to be bound by the terms, conditions, and obligations of this Agreement. You also represent you had full opportunity, with the help of a professional advisor if you used one, to ask us and our employees, development agents, agents, or representatives, all appropriate questions and we and our employees, development agents, agents or representatives answered all of your questions to your satisfaction, except questions on the subject of potential earnings, discussed in the following paragraph. If you did not use a professional advisor, you represent you are satisfied relying on your own education, experience, and skill in evaluating the merits of a franchise offering

H. You acknowledge no employee, agent, or representative of ours, or of our Affiliates, or our development agents, made any oral, written or visual representation or projection to you of actual or potential sales, earnings, or net or gross profits. You also acknowledge no employee, agent, or representative of ours, or of our Affiliates, or our development agents, has made any statements that are contrary to, or different from, the information in the Offering Circular, including but not limited to any statements about advertising, marketing, media support, media penetration, training, store density, store locations, support services and assistance, or the costs to establish or operate a SUBWAY® restaurant, except for any statements you wrote in at Paragraph 15

I. You represent you understand the risks of owning a business and specifically the risks of owning a SUBWAY® restaurant, and you are able to bear such risks. You acknowledge the success of the Restaurant will depend primarily on your own efforts and abilities and those of your employees, and you will have to work hard and use your best efforts to operate the Restaurant. You also acknowledge other factors beyond our or your control will affect the Restaurant's success, including but not limited to, competition, demographic patterns, consumer trends, interest rates, economic conditions, government policies, weather, local laws, rules and regulations, legal claims,

inflation, labor costs, lease terms, market conditions, and other conditions which may be difficult to anticipate, assess, or even identify. You acknowledge that you are subject to all federal, state and local laws relating to the franchise business. You recognize some SUBWAY® restaurants have failed and more will fail in the future. You understand that your success will depend substantially on the location you choose. You acknowledge our approval of the location for the Restaurant does not guarantee the Restaurant's success at that location and the Restaurant may lose money or fail.

J. This Agreement does not grant you any territorial rights and we and our Affiliates have unlimited rights to compete with you and to license others to compete with you.

K. YOU UNDERSTAND AND ACKNOWLEDGE THAT PARAGRAPH 14 OF THIS AGREEMENT AMENDS ANY EXISTING FRANCHISE AGREEMENTS YOU HAVE WITH US, to include the following provisions of this Agreement Subparagraph 5.b. (regarding compliance with applicable laws and Operations Manual and royalty increase for non-compliance), Subparagraph 5.c. (regarding payment of taxes, costs and expenses, responsibility for employment practices and employees, insurance and indemnification), Subparagraph 5.f. (regarding reporting information electronically by personal computer based point-of-sale system, SUBWAY® Cash Card Program and other new technology initiatives, high speed broadband connection, real-time sales reporting, providing electronic, audio and video data and acceptance of debit and credit cards), Subparagraph 5.g. (regarding record keeping), Subparagraph 5.h. (regarding fees for under-reporting), Subparagraph 5.l. (regarding payment of advertising contributions and increasing advertising percentage), Subparagraph 5.m. (regarding use of domain names), Paragraph 8 (regarding defaults and termination), Paragraph 10 (regarding dispute resolution), Subparagraph 11.f. (regarding interest and late fees), Subparagraph 11.m. (regarding no territorial rights and our unlimited right to compete), Subparagraph 11.n. (regarding compliance with anti-terrorism laws), Subparagraph 11.o. (authorization to use personal information and to conduct an investigative background search), Paragraph 13 (regarding governing law, merger clause and continuing effect), and Paragraph 17 (regarding limitation of liability).

L. YOU UNDERSTAND AND ACKNOWLEDGE ALL DISPUTES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, EXCEPT FOR CERTAIN OF OUR CLAIMS DESCRIBED IN SUBPARAGRAPH 10.d, WILL BE ARBITRATED IN CONNECTICUT, UNDER PARAGRAPH 10 BELOW, IF NOT OTHERWISE RESOLVED.

AGREEMENT:

Acknowledging and agreeing to the above recitals, we and you (the "parties") further agree:

1. FRANCHISE FEES. When you sign this Agreement, you will pay us the Franchise Fee checked below, which we will not refund except as we specifically provide for below. [Check one]

_____ a. **Standard Fee.** \$15,000. You will pay our standard fee for a first or additional franchise. We may refund one-half (1/2) of your Franchise Fee if you fail to achieve a passing score on the standardized test conducted during the training program as provided in Subparagraph 5.a.(2). If you sign this Agreement, including the Specific Location Rider, we may refund your Franchise Fee as provided in Subparagraph 5 a.(1) of this Agreement as amended by the Specific Location Rider.

_____ b. **Reduced Fee.** \$7,500 (i) You represent you are currently a SUBWAY® franchisee and all of your franchises are in substantial compliance as defined in the Operations Manual (referenced in Subparagraph 5.b.) and there are no defaults under any Franchise Agreements; or (ii) You are purchasing your first SUBWAY® franchise for a non-traditional location we approved and you are a convenience store operator, a food service management company, or other company that provides its own food services, (and you have 50 or more locations or you have a net worth of at least \$10 million as shown on an audited balance sheet); or you are a cooperative, foundation, a qualified non-profit charity, hospital, university, college, other school, or an Indian nation, or governmental agency or entity; or (iii) You are purchasing your first SUBWAY® franchise for a non-traditional location we approved to be located in a portion of an existing facility you own, lease or otherwise control under a management agreement and you are a franchisee in good standing of a nationally branded gasoline retailer. If you are purchasing a franchise for a non-traditional location under clause (ii) or clause (iii), we may disapprove the location within ninety (90) days, terminate this Agreement and refund the Franchise Fee. If any of these representations are not true (based upon the most recent store evaluation) when the Restaurant opens, you agree to pay an additional \$7,500.

_____ c. **Extension Fee.** \$1,000. You previously signed a Franchise Agreement and paid a Franchise Fee but did not sign a Sublease in the time permitted. The original Franchise Agreement is replaced by this Agreement. You agree to sign a Sublease within two (2) years with no right to any extension.

_____ d. **Satellite Fee** \$5,000. You will operate the Restaurant as a limited restaurant supported by an existing Base Restaurant, as defined in the Satellite Rider. This Agreement for the Restaurant, including the

Satellite Rider, is the separate Franchise Agreement for the satellite restaurant. We will refund the Franchise Fee for the satellite restaurant as provided in Subparagraph 5.a(1) of this Agreement as amended by the Satellite Rider.

 e. **Add On Fee.** \$11,250 Individuals who are existing SUBWAY® franchisees represent their franchisees are in substantial compliance with the Operations Manual and there are no defaults under any Franchise Agreements. The Franchise Fee is the reduced Franchise Fee of \$7,500 plus an add-on fee of \$3,750 to add individuals who are not SUBWAY® franchisees. If the representations of the existing franchisees are not true when a lease is signed, you agree to pay an additional \$3,750. We may refund your add-on fee of \$3,750 if an individual is added to this Agreement and fails to achieve a passing score on our standardized test conducted during the training program as provided in Subparagraph 5.a.(2).

 f. **School Lunch** \$0. A school board, school district, municipality or institutional food service provider (or its nominee), or an individual existing franchisee is signing this Agreement to establish a restaurant in a school (grades K-12). This Agreement includes the School Lunch Rider.

XX g. **Transfer.** \$0. Franchise No. 14570 owned by Douglas Petersen and Jean Petersen ("Seller") was transferred to you (Seller may have paid a transfer fee). The Seller's Franchise Agreement is replaced by this Agreement.

 h. **Amendment or Renewal.** \$0. This Agreement replaces and/or renews the Franchise Agreement dated _____.

2. ROYALTY PAYMENTS. You will pay us weekly a Royalty equal to eight percent (8%) of the gross sales from the Restaurant and each sandwich restaurant you operate throughout the term of this Agreement, except as provided in Subparagraph 5.b. "Gross sales" means all sales or revenues, including catering and delivery, from your business exclusive of Sales Tax (as defined in Subparagraph 5.c.).

3. PERMITTED ACCESS TO THE SYSTEM AND MARKS. We grant to you during the term of this Agreement

- a. Continued access to the System, including the loan of a copy of the Operations Manual.
- b. Continued access to information pertaining to new developments, improvements, techniques and processes in the System.
- c. A limited, non-exclusive license to use the Marks in connection with the operation of the Restaurant at one (1) location at a site we and you approved.

4. OUR OBLIGATIONS. We will provide you during the term of this Agreement

- a. A training program for establishing and operating a restaurant using the System, at a location we choose. You will pay all transportation, lodging, and other expenses to attend the training program.
- b. A representative or development agent of ours to call on during our representative's or development agent's normal business hours for consultation concerning the operation of the Restaurant.
- c. A program of assistance, including periodic consultations with our representative or development agent in a location we choose, an electronic newsletter advising of new developments and techniques in the System; and access during their normal business hours to specified office personnel you may call for consultations concerning the operation of the Restaurant.

5. YOUR OBLIGATIONS. You agree to do the following:

- a. In regards to the Sublease for the Restaurant
 - (1) You will sign a Sublease or in limited circumstances a license for the Restaurant ("Sublease") within two (2) years after signing this Agreement. If you do not, this Agreement will automatically expire unless you i) request and are granted an extension, ii) pay an extension fee of \$1,000 US, and iii) sign our then current franchise agreement.
 - (2) Before opening, you must successfully complete the training program we provide under Subparagraph 4 a. You may be dismissed from the training program and this Agreement may be terminated if you fail to act in a professional manner at all times during the training program in accordance with our Business Code of Conduct. Your Franchise Fee will not be

refunded. You may be required to achieve a passing score on our standardized test conducted during the training program. If you fail to achieve a passing score, you will have the option to take one final retest. If you fail to achieve a passing score on the final retest or you opt not to take the final retest, we may dismiss you from the training program, cancel this Agreement and refund one-half (1/2) of your Franchise Fee. If more than one individual signs this Agreement, any one of the individuals who does not achieve a passing score on the test may be dismissed from the training program, removed from this Agreement and no portion of the Franchise Fee will be refunded. We will not reimburse you for your travel expenses

- (3) The Restaurant will be at a location found by you and approved by us. We or an Affiliate we designate will lease the premises and sublet them to you. We or our designee will attempt to secure a fair rent for the premises but we cannot represent it will be the best available rent in your area. If you materially breach this Agreement or the lease, we or our designee may terminate the Sublease with you after giving the notice required in the Sublease.
- (4) After you sign the Sublease, you will construct, equip, and open the Restaurant to the specifications contained in the Operations Manual

b You will operate your business in compliance with all existing and future applicable laws and governmental regulations, including, but not limited to, those concerning labor, taxes, health, and safety. You will be required to pay all fees associated with such compliance. You agree to obtain and keep in force, at your expense, any permits, licenses, registrations, certifications or other consents required for leasing, constructing, or operating the Restaurant.

You will operate the Restaurant in accordance with our Operations Manual (the "Operations Manual"), which contains mandatory and suggested specifications, standards and operating procedures, which may be updated from time to time as a result of experience, or changes in the law or marketplace. You will make, at your sole expense, changes necessary to conform to the Operations Manual, including, but not limited to, repairing items not in good condition or not functioning properly, and upgrading and remodeling the Restaurant, including leasehold improvements, furniture, fixtures, equipment, and signs. You acknowledge these requirements are necessary and reasonable to preserve the identity, reputation, and goodwill we developed and the value of the franchise. You agree to make the repairs and the updates, and pay all reasonable, required costs within reasonable time periods we establish. You will adhere to quality control standards we prescribe in the Operations Manual or elsewhere with respect to the character or quality of the products you will sell or the services you will perform in association with the Marks. You must respond to and satisfy all customer complaints.

If you fail to operate the Restaurant in accordance with the Operations Manual, we may terminate this Agreement under Subparagraphs 8 a, 8.b and 8 c., as applicable. In lieu of termination, we may impose a fee as a pre-estimate of losses for each day the Restaurant is not in compliance with the Operations Manual to compensate us for damages and for costs we incur to compel you to bring the Restaurant into compliance. If the Restaurant is Significantly Out of Compliance as defined in the Operations Manual for three (3) consecutive evaluations, your royalty rate for the Restaurant will increase to ten percent (10%) of gross sales and will remain at that rate until the Restaurant operates for three (3) consecutive months without being Significantly Out of Compliance. This increase in the royalty rate will cover our expenses to administer the Restaurant's compliance with the Operations Manual. The Operations Manual, as amended from time to time, is intended to further the purposes of this Agreement and is specifically incorporated into this Agreement. The Operations Manual constitutes a confidential trade secret and will remain our property. You may not, and you may not allow others to, reproduce or photocopy the Operations Manual, in whole or in part, without our written consent. You will not conduct any business or sell any products at the Restaurant other than the business and products we approve for the location.

c You will be solely responsible for all costs of building and operating the Restaurant, including, but not limited to, sales or use tax, goods and services tax, gross receipts tax, excise tax or other similar tax ("Sales Tax"), fees, other taxes, customs, stamp duty, other duties, governmental registrations, construction costs and permits, equipment, furniture, fixtures, signs, advertising, insurance, food products, labor, utilities, and rent. We will not have any liability for these costs and you will reimburse us for any such costs that we must pay in connection with your operation of the Restaurant. You will pay any Sales Tax imposed by law on the Franchise Fee, Royalty, advertising fees, and any other amounts payable under this Agreement, whether assessed on you or on us. If we must make the payment to the taxing jurisdiction for any Sales Tax that is your responsibility under this Agreement, we will pass the amount on to you and you will reimburse us. You must register to collect and pay Sales Taxes before you open the Restaurant, and you must maintain these registrations during the term of this Agreement. You will recruit, hire, train, terminate, and supervise all Restaurant employees, set pay rates, and pay all wages and related amounts, including any employment benefits, unemployment insurance, withholding taxes or other sums, and we will not have any responsibility for these matters.

The insurance you must obtain and maintain includes, but is not limited to, statutory worker's compensation in the minimum amount required by law, comprehensive liability insurance, including products liability coverage, in the minimum amount of \$2,000,000 per occurrence/\$4,000,000 general aggregate, and business vehicle coverage, including hired and non-owned vehicle liability coverage, in the minimum amount of

\$1,000,000. You must provide us with a copy of your Certificate of Insurance when you return your signed Sublease or finalize your lease. You will keep all insurance policies in force for the mutual benefit of the parties. With the exception of worker's compensation and owned vehicle coverage, all insurance policies must name as additional insureds, us, our Affiliates, our Development Agent assigned to the Restaurant (the "Development Agent"), and our agents, representatives, shareholders, directors, officers and employees, and those of our Affiliates and the Development Agent (the "Additional Insureds"), with such coverage being primary coverage. Your insurance company must agree to give us at least twenty (20) days' prior written notice of termination, expiration, material modification, or cancellation of your policy, or cancellation of any of the Additional Insureds as an additional insured. You agree to defend, indemnify, and save harmless, the Additional Insureds, from and against all liability, injury, loss, cost and expense of any type (including lawyers' fees), and damages that arise in or in connection with your operation of the Restaurant, regardless of cause or any fault or negligence (including sole or concurrent negligence) by the Additional Insureds, which indemnification will not be relieved by any insurance you carry. You acknowledge we may modify or increase the insurance requirements during the term of this Agreement due to changes in experience, and you agree to comply with the new requirements. You acknowledge we may from time to time designate one or more approved insurance brokers or companies under a master insurance program we establish for franchisees generally, and you must purchase your coverage from one of the approved insurance brokers and/or their associated company.

d. You will not own or operate, or assist another person to own or operate, any other business anywhere, directly or indirectly, during the term of this Agreement, which is identical with or similar to the business reasonably contemplated by this Agreement, except as our authorized representative or as our duly licensed franchisee at a location we approve. You agree to pay us \$15,000 for each business you own or operate in violation of this Subparagraph, plus eight percent (8%) of its gross sales, as being a reasonable pre-estimate of the damages we will suffer. We may also seek to enjoin your activities under Subparagraph 10.d.

e. You will sign and deliver to us appropriate electronic funds transfer preauthorized draft forms (or forms serving the same purpose) for the Restaurant's checking account before you open the Restaurant. By signing these forms, you authorize us to withdraw money from the account on a timely basis to collect the appropriate Royalty, advertising contributions, interest, late fees, and other charges that you will owe, under this Agreement or under any other Franchise Agreement you have with us. In certain circumstances, you will also authorize us to withdraw money for fees that we paid to a third party on your behalf in connection with the Restaurant.

f. You will report your gross sales by telephone, facsimile, electronically, or by other means we permit, within two (2) days after the end of the business week (currently Tuesday). You will submit weekly summaries showing results of the Restaurant's operations by the following Saturday, in writing or in electronic form, as we permit, to locations we designate. You agree to use and maintain at the Restaurant a personal computer based point-of-sale system and software compatible with our requirements. You agree to install additions, substitutions, and upgrades to the hardware, software, and other items to maintain full operational efficiency and to keep pace with changing technology and updates to our requirements. You will record all sales and designated business information in your system in the manner we specify in the Operations Manual. You will report your information to us electronically as we specify and we may call up or poll your system to retrieve the information at any time. We may estimate gross sales if you fail to report on time. We may withdraw money from your checking account for Royalty and advertising contributions under the above Subparagraph, for the amounts then due based on reported or estimated sales. We will adjust charges based on estimated gross sales after we determine actual sales.

You will use and maintain an email address to send and receive electronic mail and attachments on the Internet. You may be required to invest in and implement new technology initiatives, which may include but will not be limited to the SUBWAY® Cash Card Program, LCD or plasma monitors, music, Internet TV broadcast, WIFI and Software Management applications, video surveillance, remote ordering through kiosks, PC's or hand held devices, E-learning, and software applications designed to better manage business functions and control costs. You will be responsible for all fees associated with these new technology initiatives. You may be required to use a supplier we designate for any goods and services associated with these initiatives. In the future, you will be required to: i) connect the Restaurant to the Internet through a high-speed broadband connection that meets our standards and specifications; ii) report all transactions of the Restaurant to us electronically at the same time each transaction occurs, and iii) provide us with all video, audio and electronic data collected from the Restaurant in the manner we specify. You may be required to accept credit or debit cards from customers. You may also be required to obtain a report of all credit and debit transactions and may have to provide us with a copy of this report.

g. You shall keep full, complete and accurate books and accounts with respect to the Restaurant, in accordance with generally accepted accounting principles and all requirements of law and in the form and manner prescribed below or as further prescribed by us from time to time. Such records shall be created exclusively for the Restaurant and shall be separate and apart from records kept for any other business in which you have an interest. You will allow our representatives and our development agent and our development agent's

representatives to enter your business premises without prior notice during regular business hours to inspect, audit, photocopy, and videotape your business operations and records, and to interview the Restaurant's employees and customers. Instead of or in addition to the foregoing, you will, upon our written request, make photocopies of all records we request and forward them to us or our representatives at such address as we designate in writing. We will reimburse you for the reasonable cost of photocopying documents that we request. You agree that we shall have the right to examine your books and records, and to perform such audits, inspections, tests and other analyses as we deem appropriate to verify gross sales. You will keep all of the following at the Restaurant for the current year and for the immediate past three (3) years: cash register tapes, control sheets, weekly inventory sheets, deposit slips, business and personal bank statements and canceled checks, sales and purchase records, business and personal tax returns, cash receipts journals, cash disbursements journals, payroll registers, general ledgers, semi-annual balance sheets, profit and loss statements, accounting records, and such other records and information as we may request from time to time. You also grant us permission to examine without prior notice to you, all records of any supplier relating to your purchases, and you hereby authorize such suppliers to release your purchase records to us at such times and places as we request.

h. You will pay us, if we or our representatives determine that you under-reported gross sales, all Royalty, advertising contributions and other charges due on the gross sales that were not reported, plus interest and the late fee as provided in Subparagraph 11.f. We may estimate your gross sales to determine whether you under-reported gross sales. If reported gross sales for any calendar year are less than ninety-eight percent (98%) of the actual gross sales for that period, you will reimburse us for all costs of the investigation, including salaries, outside accountant fees, outside attorneys' fees, travel, meals, and lodging. If reported gross sales for any calendar year are less than ninety-five percent (95%) of the actual gross sales for that period, you must also pay us a fee equal to one hundred percent (100%) of the amount of Royalty, advertising contributions and other charges due on the gross sales that were not reported. This fee covers our additional expenses for tracking and administering your under-reporting. You agree to pay for all costs of any audit that did not occur due to your failure to produce your books and records at the time of audit if we notified you in writing of the audit at least five (5) days before the scheduled date. If you fail to submit all of your information to be audited, we may estimate your sales and charge you.

i. You will pay us four and one-half percent (4 ½%) of gross sales of the Restaurant on a weekly basis. This amount will be placed into an advertising fund managed jointly by us and elected franchisees for the benefit of franchisees in the System. Your advertising contributions will be placed into an advertising fund that (a) follows our Transparency Policy and fully discloses all material financial data about the fund to franchisees, (b) is prudent with expenses, and (c) works closely with us to produce and place advertising to enhance the SUBWAY® brand. At any time, franchisees may temporarily or permanently increase the advertising percentage for either the country or any market designated by the advertising fund by a two-thirds (2/3) vote on the basis of one (1) vote for each operating restaurant. We and our Affiliates or another entity that we designate may negotiate advertising contributions and programs with suppliers. We or our Affiliate may designate that these advertising contributions shall be forwarded to an advertising fund or be placed into a separate fund to be spent on advertising and related expenses for the benefit of franchisees at our or our Affiliate's complete unrestricted discretion. You acknowledge advertising contributions may not benefit franchisees in any area in proportion to the amounts they paid. Within six (6) months after you sign this Agreement, we may, in our sole discretion, require you to place \$10,000 into a marketing assistance fund to promote the SUBWAY® brand in your local area.

j. You will not place "For Sale" or similar signs at or in the general vicinity of the Restaurant or use any words in any advertising that identify the business offered for sale as a SUBWAY® restaurant.

k. You will make prompt payment of all charges you owe to us, our Affiliates, your vendors, and the landlord of the premises, in addition to Royalty and advertising contributions, and pay all Sales Tax, other taxes, and debts of the Restaurant as they become due.

l. You will use or display the Marks on materials and stationery used in connection with the Restaurant only as we permit and as provided in this Agreement or in the Operations Manual. You will display the following notice in a prominent place at the Restaurant: **"The SUBWAY® trademarks are owned by Doctor's Associates Inc. and the independent franchised operator of this restaurant is a licensed user of such trademarks."**

m. You will operate and promote the Restaurant under the name SUBWAY® or other name we direct without prefix or suffix added to the name. You will not use the word "SUBWAY" as part of a corporate or other business name. You will not license or purchase vehicles, fixtures, products, supplies or equipment, or incur any obligations except in your individual, corporate or other business name. Any sign face bearing the name SUBWAY® will remain our property even though you may have paid a third party to make the sign face. You will not use the Marks in a manner that degrades, diminishes, or detracts from the goodwill associated with the Marks nor will you use the Marks in a manner which is scandalous, immoral, or satirical. You agree to promptly change the manner of such use if requested to do so by us. You will not establish a local domain name for a website using the word "SUBWAY" without our prior written authorization. The domain name must be registered under the name of DAI. We will require you to cancel your registration of the domain name if you fail to obtain our prior written

authorization. At our request, you must remove any inappropriate information we deem not to be in the best interest of the SUBWAY® franchise system. All present or future goodwill associated with the Marks belongs to us. You agree not to contest the validity or ownership of any of the Marks, or to assist any other person to do so. You agree you do not have and you will not acquire any ownership rights in the Marks, and you will not register or attempt to register any of the Marks. You agree to assign and transfer to us your rights in or registrations of the Marks that you have or may have. All references to the Marks in this Agreement include any additional or replacement Marks associated with the System that we authorize you to use.

n. You will always indicate your status as an independent franchised operator and franchisee to others and on any document or information released by you in connection with the Restaurant.

o. You acknowledge the System includes confidential and proprietary information, including, but not limited to customer lists, vendor lists, products, recipes, formulas, specifications, food preparation procedures, devices, techniques, plans, business methods and strategies, organizational structure, financial information, marketing and development plans and strategies, advertising programs, creative materials, media schedules, business forms, drawings, blueprints, reproductions, data, Franchise Agreements, business information related to franchisees, pricing policies, trademarks, published materials including the mark SUBWAY® and variations thereof, documents, letters or other paper work, trade secrets, know-how, information contained in the Operations Manual, and the Subway to Subway publication, and all information we or our Affiliates designate as confidential ("Confidential Information"). Confidential Information will remain our property or our Affiliate's property.

During the term of this Agreement you will not, without the express written consent of our board of directors, disclose, publish, or divulge any Confidential Information to any person, firm, corporation or other entity, or use any Confidential Information, directly or indirectly, for your own benefit or the benefit of any person, firm, corporation or other entity, other than for our benefit. You agree that you will only disclose such Confidential Information to those employees that need such Confidential Information in the course of their duties and shall only reveal or transmit the Confidential Information to them after advising them that the Confidential Information has been made available to you subject to this Agreement and they agree to be bound by the confidentiality terms of this Agreement. You acknowledge that if you violate this provision, substantial injury could result to us, our Affiliates, you and other SUBWAY® franchisees. If you violate this provision, you will be liable to us for our damages and we may also seek to enjoin your activities under Subparagraph 10 d. You will return all written Confidential Information, including all reproductions and copies thereof promptly upon our request. In the event that you are requested or required (by oral interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or similar process) to disclose any part of Confidential Information, you shall provide us with prompt written notice of any such request or requirement so that we may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Subparagraph. If in the absence of a protective order or other remedy or waiver, you are legally compelled to disclose Confidential Information to any tribunal or else stand liable for contempt or suffer other censure or penalty, you may, without liability hereunder, disclose to such tribunal only that portion of Confidential Information which your legal counsel advises that you are legally required to disclose.

Confidential Information shall not include, and the foregoing restrictions shall not apply to, any information or materials (a) which becomes generally known to the public other than as a result of a disclosure by you or your representative, (b) which was disclosed to you in written form, provided that you did not have reason to believe that the source of the information may have been bound by a nondisclosure agreement with other contractual, legal or fiduciary obligations of confidentiality to us or any other party with respect to such information or materials; (c) becomes available to you on a non-confidential basis from a source other than us, provided that such source is not bound by a nondisclosure agreement with other contractual, legal or fiduciary obligations of confidentiality to us or any other party with respect to such information or materials, or (d) which is independently developed by Recipient without the use of Confidential Information. The burden of proving that Confidential Information may be disclosed pursuant to the exception set forth in this subparagraph shall be on the Recipient.

6. RELOCATION OF THE RESTAURANT. You may relocate the Restaurant only with our prior written approval. You will have one (1) year to relocate the Restaurant and you will pay all expenses and liabilities to terminate the lease and move.

7. TERM OF AGREEMENT. If, under local law, this Agreement must be registered then it will not become effective until it is. The term of this Agreement is twenty (20) years from the date of this Agreement and will automatically renew for additional twenty (20) year periods unless either party chooses not to renew and sends written notice to the other at least six (6) months before the expiration of any twenty (20) year period. Upon renewal you have the option to either 1) continue under the terms of this Agreement and the royalty rate will increase to ten percent (10%) with all other terms and conditions of this Agreement remaining the same, or 2) you may sign our

then current Franchise Agreement which will replace this Agreement and which may contain terms or conditions that differ from this Agreement, including financial terms, except for the royalty rate which will remain at eight percent (8%) This Agreement will be automatically renewed under option i) unless you send written notice of your intent to renew under option ii) at least six (6) months prior to expiration of this Agreement There will be no renewal fee

8. TERMINATION AND EXPIRATION PROVISIONS.

a. If we give you ten (10) days' written notice, we may, at our option and without prejudice to any of our other rights or remedies provided under this Agreement, terminate this Agreement if (i) you abandon the Restaurant, or (ii) you fail to pay any money you owe us, our Affiliates, the landlord of the premises, or any amounts we may become liable to pay because of your action or omission, or (iii) you are evicted from the Restaurant location for non-payment of rent or related charges. The notice will specify the default and provide you ten (10) days to remedy the default from the date of delivery of the notice.

b. If we give you ninety (90) days' written notice, we may, at our option and without prejudice to any of our other rights or remedies provided under this Agreement, terminate this Agreement if you (i) do not substantially perform all of the terms and conditions of this Agreement not otherwise covered in Subparagraph 8.a., or (ii) you lose possession of the premises where the Restaurant is located, or (iii) you become insolvent, make an assignment for the benefit of creditors or seek bankruptcy relief, either reorganization or liquidation, in any court, legal or equitable, or (iv) you lose any permit or license which you need to operate the Restaurant, or (v) you fail to comply with your duties under this Agreement or the Operations Manual. The notice will specify the default and provide you sixty (60) days to remedy the default from the date of delivery of the notice. If you cure the default within sixty (60) days, the notice will be void.

c. We may, at our option and without prejudice to any of our other rights or remedies provided under this Agreement, terminate this Agreement without an opportunity to remedy the default unless prohibited by law if i) you fail to comply with all civil and criminal laws, ordinances, rules, regulations and orders of public authorities, or ii) intentionally under-report gross sales, falsify financial data or otherwise commit an act of fraud, or iii) you are convicted or plead guilty or "nolo contendere" to a felony, a crime of moral turpitude, an indictable offense, unfair or deceptive trade practices, or any other crime or offense that we believe is injurious or prejudicial to the System, the Marks or the goodwill associated therewith, or iv) if you use the Restaurant or the Restaurant location for any illegal or unauthorized use, or v) we determine that you are a suspected terrorist or otherwise associated directly or indirectly with terrorist activities, or vi) you are dismissed from the training program.

After the second notice of a default under Subparagraph 8 a or 8 b, any subsequent default in the following twelve (12) month period, will be good cause for a final termination without providing you an opportunity to remedy the default or even if you remedy the default.

d. Our waiver of any of your defaults will not constitute a waiver of any other default and will not prevent us from requiring you to strictly comply with this Agreement.

e. Upon termination or expiration of this Agreement, all of your rights under this Agreement will terminate. You must change the appearance of the Restaurant, unless we instruct you otherwise, so it will no longer be identified as a SUBWAY® restaurant, and you must stop using the System, including the Marks, signs, colors, structures, personal computer based point-of-sale system software developed for SUBWAY® restaurants, printed goods and forms of advertising indicative of our sandwich business and return the Operations Manual to us. You are required to cancel any permits, licenses, registrations, certifications or other consents required for leasing, constructing, or operating the Restaurant. If you fail to do so within a reasonable time, we are authorized to cancel them for you. If you breach this provision, you will pay us \$250 per day for each day you are in default, as being a reasonable pre-estimate of the damages we will suffer. We may also seek to enjoin your activities under Subparagraph 10.d

f. If any of the provisions above which permit us to terminate the franchise violate your state law, if it applies, such state law relating to termination will prevail over the offending provisions.

g. For three (3) years after the termination, expiration or transfer of this Agreement, you will not directly or indirectly engage in, or assist another to engage in, any sandwich business within three (3) miles of any location where a SUBWAY® restaurant operates or operated in the prior year. You agree to pay us \$15,000 for each sandwich business location you are associated with in the restricted area in violation of this Subparagraph, plus eight percent (8%) of the gross sales of such location during the three (3) year period, as being a reasonable pre-estimate of the damages we will suffer. We may also seek to enjoin your activities under Subparagraph 10.d. Nothing in this Subparagraph or any other provision of this Agreement grants you any territorial or other exclusive rights

h. Upon termination, expiration or transfer of this Agreement, you agree to remain bound by the provisions of confidentiality and non-disclosure under Subparagraph 5 o of this Agreement. You acknowledge that all Confidential Information will remain our property or our Affiliate's property. You will not at any time after termination, expiration or transfer of this Agreement, without our prior written consent, disclose to any unauthorized person or entity, or use for the benefit of any unauthorized person or entity, any Confidential Information.

i. Upon termination or expiration of this Agreement, all telephone listings, telephone numbers, Internet addresses and domain names used by the public to communicate with the Restaurant will automatically become our property if permitted by state law. In any event, you agree not to use any telephone numbers, Internet addresses or domain names associated with the Restaurant after the termination or expiration of this Agreement.

j. We have the right to repurchase the Restaurant within thirty (30) days of termination or expiration of this Agreement at fair market value minus any money you owe us, our affiliates or the landlord. If we do not purchase the Restaurant, you are responsible for obtaining a termination and mutual release of the lease from the landlord of the premises on which the Restaurant is located. You are responsible for all costs associated with obtaining the termination and mutual release, including but not limited to any amount owed to the landlord.

9. TRANSFER AND ASSIGNMENT OF THE RESTAURANT.

a. You may only transfer the Restaurant with this Agreement and only with our prior written approval, as provided in this Paragraph 9. You may transfer the Restaurant and this Agreement to a natural person or persons (not a corporation), provided: (1) you first offer, in writing, to sell the Restaurant to us on the same terms and conditions offered by a bona fide third party purchaser, we fail to accept the offer within thirty (30) days, and we approve your contract with the purchaser; (2) each purchaser has a satisfactory credit rating, and is of good moral character; (3) each purchaser received a passing score on our standardized test (if not already a SUBWAY® franchisee) and attended and successfully completed our training program or agrees to attend our first available training program promptly after the sale (and then must successfully complete the training program or will be in default under the Franchise Agreement); (4) each purchaser received the required disclosure documents in accordance with our policies and federal and state laws, rules, and regulations, and signs the then current form of Franchise Agreement which will amend and replace this Agreement and may contain terms that differ from this Agreement, including financial terms, and assumes the Sublease for the Restaurant; (5) you pay in full all money you owe us, our Affiliates, for all your SUBWAY® restaurants and you are not otherwise in default under this Agreement; (6) you pay us \$7,500 plus any applicable Sales Tax for our legal, accounting, training, and other expenses we incur in connection with the transfer; (7) you deliver a general release in favor of us, the Development Agent and our Affiliates, and agents, representatives, shareholders, partners, directors, officers, and employees of ours and of the Development Agent and our Affiliates signed by you and each purchaser; (8) you transfer the Operations Manual for the Restaurant to the purchaser on the date of transfer; and (9) at or prior to the time of the transfer you bring the Restaurant into full compliance with our then current standards set forth in the Operations Manual. All transfer documents will be in English in a form satisfactory to us. During the transfer process, DAI may share your personal information with its affiliates or prospective franchisees in accordance with the procedures set forth in the DAI Privacy Policy. If you do not want your information shared during the transfer process, you must opt out either prior to the completion of the store transfer or at the time of the transfer. All opt out requests should be directed to the Privacy Officer, as set forth in the policy.

b. You may assign your rights under this Agreement to operate the Restaurant (but not this Agreement) to a corporation (or similar entity) provided: (1) the corporation is newly organized and its activities are confined exclusively to operating the Restaurant; (2) you are, and remain at all times, the owner of the controlling voting interest and majority ownership interest (more than 50%) of the corporation; (3) each individual who signs this Agreement owns no less than twenty-five percent (25%) of the corporation, unless we require otherwise; (4) the corporation delivers to us a written assumption of your obligations under this Agreement; (5) all shareholders of the corporation deliver to us a written guarantee of the full and prompt payment and performance by the corporation of all its obligations to us under the assignment; (6) you acknowledge to us in writing that you are not relieved of any personal liability; and (7) you deliver a general release described in Subparagraph 9.a., signed by you, the corporation, and each shareholder of the corporation. You will also remain personally liable under the Sublease. You acknowledge that any judgment awarded in our favor, pursuant to this Agreement, may be enforced against you, the corporation and its successors or assigns.

c. Your rights under this Agreement may pass to your next of kin or legatee upon your death. Each such transferee must receive a passing score on our standardized test (if not already a SUBWAY® franchisee), deliver a written assumption to us, and agree in writing to attend our next training session. Each transferee must then successfully complete our training program or will be in default under this Agreement. The transferees will also assume the Sublease in writing.

d We may transfer and assign this Agreement without your consent, and this Agreement will inure to the benefit of our successors and assigns

10. ARBITRATION OF DISPUTES.

a. Any dispute, controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration. The arbitration shall be administered by an arbitration agency, such as the American Arbitration Association ("AAA") or the American Dispute Resolution Center, in accordance with its administrative rules including, as applicable, the Commercial Rules of the AAA and under the Expedited Procedures of such rules or under the Optional Rules For Emergency Measures of Protection of the AAA. Judgment rendered by the Arbitrator may be entered in any court having jurisdiction thereof. The costs of the arbitration will be borne equally by the parties. The parties agree that Bridgeport, Connecticut shall be the site for all hearings held under this Paragraph 10, and that such hearings shall be before a single arbitrator, not a panel, and neither party shall pursue class claims and/or consolidate the arbitration with any other proceedings to which we are a party. The parties will honor validly served subpoenas, warrants and court orders.

b. If you breach the terms of your Sublease, the Sublessor, whether us or our designee, may exercise its rights under the Sublease, including to evict you from the franchised location. Any action brought by the Sublessor to enforce the Sublease, including actions brought pursuant to the cross-default clause in Paragraph 6 of the Sublease (which provides that a breach of the Franchise Agreement is a breach of the Sublease), is not to be construed as an arbitrable dispute

The parties agree that you may seek a stay of any eviction brought under the cross-default clause in Paragraph 6 of the Sublease by filing a demand for arbitration in accordance with Subparagraph 10.a within thirty (30) days of the Sublessor's commencement of the eviction. The stay may be lifted upon conclusion of the arbitration. You may not seek a stay of eviction for any actions involving non-payment of rent or in a case where an arbitration award under the Franchise Agreement has been issued.

c. You may only seek damages or any remedy under law or equity for any arbitrable claim against us or our successors or assigns. You agree that our Affiliates, shareholders, directors, officers, employees, agents and representatives, and their affiliates, shall not be liable nor named as a party in any arbitration or litigation proceeding commenced by you where the claim arises out of or relates to this Agreement. You further agree that the foregoing parties are intended beneficiaries of the arbitration clause; and that all claims against them that arise out of or relate to this Agreement must be resolved with us through arbitration. If you name a party in any arbitration or litigation proceeding in violation of this Subparagraph 10.c., you will reimburse us for reasonable costs incurred, including but not limited to, arbitration fees, court costs, lawyers' fees, management preparation time, witness fees, and travel expenses incurred by us or the party

d. Notwithstanding the arbitration clause in Subparagraph 10.a., we may bring an action for injunctive relief in any court having jurisdiction to enforce our trademark or proprietary rights, the covenants not to compete, or the restriction on disclosure of Confidential Information in order to avoid irreparable harm to us, our affiliates and the franchise system as a whole

e. Any disputes concerning the enforceability or scope of the arbitration clause shall be resolved pursuant to the Federal Arbitration Act, 9 U.S.C. § et seq. ("FAA"), and the parties agree that the FAA preempts any state law restrictions (including the site of the arbitration) on the enforcement of the arbitration clause in this Agreement. If, prior to an Arbitrator's final decision, either we or you commence an action in any court of a claim that arises out of or relates to this Agreement (except for the purpose of enforcing the arbitration clause or as otherwise permitted by this Agreement), that party will be responsible for the other party's expenses of enforcing the arbitration clause, including court costs, arbitration filing fees and other costs and attorney's fees.

f. We and our Affiliates, and you and your Affiliates, will not withhold any money due to the other party and its Affiliates, under this Agreement or any other agreement. A party or its Affiliate that withholds money in violation of this provision will reimburse the party or its Affiliate whose money is withheld for the reasonable costs to collect the withheld money, notwithstanding the provisions of Subparagraph 10.a. These costs include, but are not limited to, mediation and arbitration fees, court costs, lawyers' fees, management preparation time, witness fees, and travel expenses incurred by the party or its Affiliate or an advertising fund, or its agents or representatives.

g. If a party (i) commences action in any court, except to compel arbitration, or except as specifically permitted under this Agreement, prior to an arbitrator's final decision, or (ii) commences any arbitration in any forum except where permitted under this Paragraph 10, or (iii) when permitted to commence a litigation proceeding, commences any litigation proceeding in any forum except where permitted under this Paragraph 10, then that party is in default of this Agreement. The defaulting party must commence arbitration (or a litigation proceeding, if

permitted under this Paragraph 10), in a permitted forum prior to any award or final judgment. The defaulting party will be responsible for all expenses incurred by the other party, including lawyers' fees. Subject to federal or state law, if a party defaults under any other provision of this Paragraph 10, or under any provision of Paragraph 17 or Paragraph 18, including, but not limited to, making a claim for special, incidental, consequential, punitive, or multiple damages, or damages in excess of the amount permitted under this Agreement, or you name a person or entity in any arbitration or legal proceeding other than us, the defaulting party must correct its claim. The defaulting party will be responsible for all expenses incurred by the other party, or the improperly named persons or entities, including lawyers' fees, and will be liable for abuse of process.

11. OBLIGATIONS OF THE PARTIES. The parties also agree as follows:

a. You are, and will at all times be identified as, a natural person and an independent contractor. You are not our agent, partner, or employee. This Agreement does not create a partnership, joint venture, agency, or fiduciary relationship.

b. All or any part of your rights and privileges under this Agreement will return to us if for any reason you abandon, surrender, or suffer revocation of your rights and privileges.

c. If, for any reason, any court, agency, or tribunal with valid jurisdiction in a proceeding to which we are a party, decides in a final, non-appealable ruling, that a portion of this Agreement is contrary to, or in conflict with any applicable present or future law, rule, or regulation, after giving such portion the broadest legal interpretation possible, then that portion will be invalid and severable. The remainder of this Agreement will not be affected and will continue to be given full force and effect. Any invalid portion will be deemed not to be a part of this Agreement as of the date the ruling becomes final if you are a party to the proceedings, or upon your receipt of notice of nonenforcement from us. If a court, agency, or tribunal decides a covenant not to compete is too broad as to scope, time, or geographic area, the parties authorize the court, agency or tribunal to modify the covenant to the extent necessary to make it enforceable.

d. No previous course of dealing or usage in the trade not specifically set forth in this Agreement will be admissible to explain, modify, or contradict this Agreement.

e. The parties will give any notice required under this Agreement in writing, and will send it by certified mail, registered mail or by a mail service which uses a tracking system, such as Airborne Express or Federal Express. We will address notices to you at the Restaurant or at your home until you designate a different address by written notice to us. You must notify us of any address changes, including changes to your electronic mail address. You will address notices to us to Doctor's Associates Inc., 325 Bic Drive, Milford, CT 06460-3059, Attention Legal Department. Any notice will be deemed given at the date and time it is received, or refused, or delivery is made impossible by the intended recipient.

f. If your payment is more than one (1) week late you will pay a late fee equal to ten percent (10%) on any Royalty, advertising contributions, or other charges you will owe us under this Agreement. Also, you will pay interest on all your past-due accounts at up to eighteen percent (18%), but the late fee and interest will not be greater than the maximum rate allowed by law in the state in which our principal office is located or the Restaurant is located, whichever is higher.

g. You must immediately notify us of any infringement of or challenge to your use of any of the Marks, or claim by any person of any rights in any of the Marks. We will indemnify you for all damages for which you are held liable in any proceeding arising out of the use of any of the Marks in compliance with this Agreement, provided you notify us promptly, cooperate in the defense of the claim, and allow us to control the defense of the action. If a third party challenges any of the Marks claiming infringement of alleged prior or superior rights in the Mark, we will have the option and right to modify or discontinue use of the Mark and adopt substitute Marks in your geographical business areas and in other areas we select. Our liability to you under such circumstances will be limited to your cost to replace signs and advertising materials. You acknowledge and agree we have the exclusive right to pursue any trademark infringement claims against third parties.

h. If we terminate this Agreement and we must purchase the Restaurant's equipment, leasehold improvements, or both, under any applicable state law, rule, regulation, or court decision, the purchase price will be your original cost, less depreciation and amortization, based on a five (5) year life under the straight-line method.

i. If the landlord terminates the lease for the Restaurant and an arbitrator or court determines you did not breach the Sublease and it was our fault or our Affiliate's fault the landlord terminated the lease, our obligation to you will be limited to the original cost of your leasehold improvements, less depreciation based on a five (5) year life under the straight-line method. We will pay you when you reopen the Restaurant in a new location. If the

arbitrator or court determines you breached the Sublease or it was not our fault or our Affiliate's fault the landlord terminated the lease, we and our Affiliate will have no obligation to you for termination of the lease

j. If you believe that we are in default under this Agreement, you must give us written notice by certified mail, registered mail or by a mail service which uses a tracking system, such as Airborne Express or Federal Express, within ninety (90) days of the start of the default clearly stating each act or omission constituting the default. If we do not cure the default to your satisfaction within sixty (60) days after we receive your notice, you may give us notice that an arbitrable dispute exists. The parties will work diligently to attempt to resolve the arbitrable dispute in accordance with Paragraph 10

k. You will pay us Sales Tax or other tax assessed on all payments you make to us that we must collect from you or pay ourselves to the taxing authority.

l. You will pay us any applicable Sales Tax or other tax on behalf of the local taxing authority at the same time and in the same manner you pay for the taxable goods or services, whether or not the requirement is specifically stated in this Agreement.

m. You understand and acknowledge this Agreement does not grant you any territorial rights and there are no radius restrictions or minimum population requirements which limit where we can license or open another SUBWAY® restaurant, unless provided under applicable state law. We and our Affiliates have unlimited rights to compete with you and to license others to compete with you. You understand and acknowledge we and our Affiliates retain the exclusive unrestricted right to produce, distribute, and sell food products, beverages, and other products, under the SUBWAY® mark or any other mark, directly and indirectly, through employees, representatives, licensees, assigns, agents, and others, at wholesale, retail, and otherwise, at any location, without restriction by any right you may have, and without regard to the location of any SUBWAY® restaurant, and these other stores or methods of distribution may compete with the Restaurant and may adversely affect your sales. You do not have any right to exclude, control, or impose conditions on the location or development of any SUBWAY® restaurant, other restaurant, store or other method of distribution, under the SUBWAY® mark or any other mark.

n. You acknowledge it is our intent to comply with all anti-terrorism laws enacted by the US Government. You further acknowledge that we may not carry on business with anyone officially recognized by the US Government as a suspected terrorist or anyone otherwise associated directly or indirectly with terrorist activities. The parties agree that if, at any time during the term of this Agreement, it is determined that you are a suspected terrorist or otherwise associated directly or indirectly with terrorist activities, that this Agreement may be terminated immediately. You acknowledge that you are not now, and have never been a suspected terrorist or otherwise associated directly or indirectly with terrorist activity, including but not limited to, the contribution of funds to a terrorist organization. You further acknowledge that it is not your intent or purpose to purchase a SUBWAY® franchise to fund or participate in terrorist activities

o. You authorize us, at any time during the term of this agreement, to conduct credit checks or investigative background search on you which may reveal information about your business experience, educational background, criminal record, civil judgments, property ownership, liens, association with other individuals, creditworthiness and job performance.

12. TERMS, REFERENCES AND HEADINGS. All terms and words in this Agreement will be deemed to include the correct number, singular or plural, and the correct gender, masculine, feminine, or neuter, as the context or sense of this Agreement may require. Each individual signing this Agreement as the franchisee will be jointly and severally liable. References to "you" will include all such individuals collectively and individually. References to dollars (\$) in this Agreement refer to the lawful money of the United States of America. The paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.

13. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the substantive laws of the State of Connecticut, without reference to its conflicts of law, except as may otherwise be provided in this Agreement. The parties agree any franchise law or business opportunity law of the State of Connecticut, now in effect, or adopted or amended after the date of this Agreement, will not apply to franchises located outside of Connecticut. This Agreement, including the Recitals and all exhibits, contains the entire understanding of the parties and supersedes any prior written or oral understandings or agreements of the parties relating to the subject matter of this Agreement. The parties may not amend this Agreement orally, but only by a written agreement, except we may amend the Operations Manual from time to time as provided in this Agreement. The provisions of this Agreement which by their terms are intended to survive the termination or expiration of this Agreement, including, but not limited to, Subparagraphs 5 c., 5 h., 5 k., 8 d., 8 e., 8 g., 8 h., 11 b., 11 h., 11 i., 11 m., 11 n. and 11 o., and Paragraphs 10, 13, 14, 15, 16, 17, and 19, will survive the termination or expiration of this Agreement

14. AMENDMENT OF PRIOR AGREEMENTS. The parties want to encourage advertising cooperation and franchisee compliance, provide for amicable, timely, and cost effective resolution of Disputes with limitations on liability, and clarify certain provisions of existing Franchise Agreements. To achieve these goals, this Agreement has revised provisions regarding payment of taxes, costs and expenses, responsibility for employment practices and employees, insurance, indemnification, increasing advertising contributions, reporting information electronically by personal computer based point-of-sale system, defaults and termination, interest and late fees, dispute resolution, no territorial rights and our unlimited right to compete, governing law, merger clause, continuing effect, and limitation of liability. You agree to accept the provisions set forth in Subparagraph 5.b., Subparagraph 5.c., Subparagraph 5.f., Subparagraph 5.g., Subparagraph 5.h., Subparagraph 5.i., Subparagraph 5.m., Paragraph 8., Paragraph 10., Subparagraph 11.f., Subparagraph 11.m., Subparagraph 11.n., Subparagraph 11.o., Paragraph 13. and Paragraph 17 in this Agreement, for this Agreement and to the amendment of all your other existing Franchise Agreements with us to include these provisions (if the existing Franchise Agreements do not already include these provisions) **EACH OF YOU SIGNING THIS AGREEMENT AS FRANCHISEE ACKNOWLEDGES AND UNDERSTANDS THAT THIS PARAGRAPH 14 AMENDS ALL YOUR EXISTING FRANCHISE AGREEMENTS WITH US, AND ANY SUCH AMENDMENT WILL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.** This Paragraph 14 amends any existing Franchise Agreement you have if every individual who signed the existing Franchise Agreement as franchisee signs this Agreement or another Franchise Agreement containing the provisions of this Paragraph 14.

15. NO OTHER REPRESENTATIONS. You acknowledge no employee, agent, or representative of ours, or our Affiliates, or our development agents, has made any representations to you, and you have not relied on any representations, except for the representations contained in this Agreement, the Offering Circular, and our advertising materials, and except those you have written in below:

16. NO PRIOR CLAIMS AND GENERAL RELEASE. You represent that as of the date of this Agreement, you have no claims of any type against us, our Affiliates, or the Development Agent, or our agents, representatives, shareholders, directors, officers, and employees, or those of our Affiliates and the Development Agent, except those you have written in below:

You hereby release each of these individuals and entities from all claims other than those you listed above. You acknowledge and understand that any list of claims and the general release will include any alleged breaches of franchise or other laws, and any alleged breach of agreement, relating not only to this Agreement, but also to any agreements or dealings you may have or had at any time with us or any of the above listed individuals or entities.

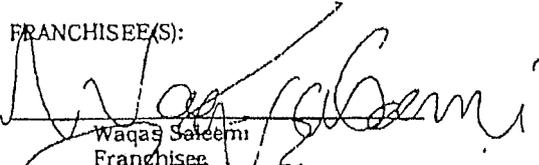
17. LIMITATIONS ON DAMAGES. EACH PARTY HEREBY WAIVES, WITHOUT LIMITATION, ANY RIGHT IT MIGHT OTHERWISE HAVE TO ASSERT A CLAIM FOR AND/OR TO RECOVER LOST PROFITS AND OTHER FORMS OF CONSEQUENTIAL, INCIDENTAL, CONTINGENT, PUNITIVE AND EXEMPLARY DAMAGES FROM THE OTHER EXCEPT AS PROVIDED HEREIN. EACH PARTY'S LIABILITY SHALL BE LIMITED TO ACTUAL COMPENSATORY DAMAGES. ACTUAL COMPENSATORY DAMAGES SHALL BE THE GREATER OF (1) \$100,000.00 OR (2) AT YOUR SOLE OPTION, ALL AMOUNTS PAID TO US FOR FRANCHISE FEES AND ROYALTIES FOR THIS AGREEMENT FOR UP TO THREE YEARS PRECEDING THE DATE OF ANY AWARD HEREIN. IF YOU CHOOSE OPTION (2), WE WILL ALSO REPURCHASE YOUR EQUIPMENT, PURCHASED FROM OR THROUGH US, AT DEPRECIATED VALUE USING THE FIVE YEAR, STRAIGHT LINE METHOD OF CALCULATION. EACH PARTY ACKNOWLEDGES THAT IT HAS HAD A FULL OPPORTUNITY TO CONSULT WITH COUNSEL CONCERNING THIS WAIVER, AND THAT THIS WAIVER IS INFORMED, VOLUNTARY, INTENTIONAL, AND NOT THE RESULT OF UNEQUAL BARGAINING POWER.

18. WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES, WITHOUT LIMITATION, ANY RIGHT IT MIGHT OTHERWISE HAVE TO TRIAL BY JURY ON ANY AND ALL CLAIMS ASSERTED AGAINST THE OTHER. THIS WAIVER IS EFFECTIVE EVEN IF A COURT OF COMPETENT JURISDICTION DECIDES THAT THE ARBITRATION PROVISION IN PARAGRAPH 10 IS UNENFORCEABLE, EACH PARTY ACKNOWLEDGES THAT IT HAS HAD A FULL OPPORTUNITY TO CONSULT WITH COUNSEL CONCERNING THIS WAIVER, AND THAT THIS WAIVER IS INFORMED, VOLUNTARY, INTENTIONAL, AND NOT THE RESULT OF UNEQUAL BARGAINING POWER. EACH PARTY AGREES THAT ANY SUCH TRIAL SHALL TAKE PLACE IN A COURT OF COMPETENT JURISDICTION IN CONNECTICUT.

19. CONSENT TO TERMS OF AGREEMENT. You acknowledge you read and understand this Agreement, including any addenda and exhibits, and you agree to be bound by all of its terms and conditions

IN WITNESS WHEREOF, the parties have executed this Agreement, as of the date first written above.

FRANCHISEE(S):

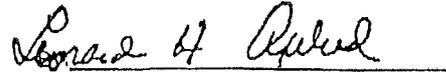


Waqas Saleemi
Franchisee



Farooq Sharyar
Franchisee

DOCTOR'S ASSOCIATES INC.



Duly Authorized

Title _____

FRANCHISE AGREEMENT ADDENDUM

This Addendum dated June 14, 2006 amends and supplements the Franchise Agreement of the same date between Doctor's Associates Inc. a Florida Corporation with principal office in Fort Lauderdale, Florida ("we" or "us"), and Waqas Saleemi and Farooq Sharyar ("you") The Franchise Agreement, as amended by this Addendum, will be called this "Agreement".

AGREEMENT

The parties amend and supplement the Franchise Agreement as follows.

I. Subparagraph 5.i. is amended by deleting the last sentence in its entirety which states. "Within six (6) months after you sign this Agreement, we may, in our sole discretion, require you to place \$10,000 into a marketing assistance fund to promote the SUBWAY® brand in your local area."

I. Add the following as new Subparagraph 5.p :

1. Within six (6) months after opening the Restaurant, we may, in our sole discretion, require you to place \$10,000 into a marketing assistance fund to promote SUBWAY® restaurants in your local area. The monies will be spent in accordance with a marketing plan developed by you and us.

III. The Franchise Agreement, as amended and supplemented by this Addendum, contains the entire understanding of the parties. The parties can amend the Franchise Agreement further only in a signed writing. The provisions of the Franchise Agreement, as amended and supplemented by this Addendum, are ratified and affirmed.

IV. You acknowledge you read and understand this Addendum and the Franchise Agreement and consent to be bound by all the terms and conditions of the Franchise Agreement, as amended and supplemented by this Addendum

IN WITNESS WHEREOF, the parties have executed this Addendum, as of the date first written above.

FRANCHISEE(S):

Waqas Saleemi

Waqas Saleemi
Franchisee

Farooq Sharyar

Farooq Sharyar
Franchisee

DOCTOR'S ASSOCIATES INC.

Richard H. Akel

By _____
Duly Authorized

Title. _____

Schedule A

FRANCHISE, #13918

DATE EXECUTED June 21, 2006

FRANCHISE AGREEMENT

DOCTOR'S ASSOCIATES INC.

with

Waqas Saleemi

Farooq Sharyar

FTC
04/01/06

FRANCHISE AGREEMENT

This Franchise Agreement (this "Agreement") is made June 21, 2006 between Doctor's Associates Inc., a Florida corporation with a principal office in Fort Lauderdale, Florida ("we" or "us"), and Wages Saleemi and Farooq Sharyar of WA ("you"), for one (1) SUBWAY® restaurant (the "Restaurant") to be located within the territory of Development Agent Ethan Golf (the "DA") or the DA's successor(s), under DA contract number 580, as specified in Item 2 of the DAI Offering Circular in effect as of the date of this Agreement

RECITALS

A We own a proprietary system for establishing and operating restaurants featuring sandwiches and salads under our trade name and service mark SUBWAY® (the "System") We developed the System spending considerable money, time, and effort. The System includes the trademark SUBWAY®, other trademarks, trade names, service marks, commercial announcements (slogans) and related insignia (logos) we own (the "Marks") The System also includes goodwill associated with the Marks, trade dress, recipes, formulas, food preparation procedures, business methods, forms, policies, trade secrets, knowledge and techniques.

B We operate and franchise others to operate SUBWAY® restaurants using the System, including the Marks.

C. You want access to the System to establish and operate the Restaurant at a location you select and we approve

D You acknowledge the System includes confidential and proprietary information which we, our Affiliates (defined below), and the development agents, franchisees and agents of us or our Affiliates, will give you to use only to establish and operate the Restaurant An "Affiliate" means a person or entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another person or entity.

E. We have granted, and will continue to grant, access to the System to others to establish and operate SUBWAY® restaurants Our goal is to be the number one quick service restaurant system in every market we enter and we plan to open many more outlets in all markets that we choose to develop. This Agreement does not grant you the right to own additional SUBWAY® restaurants. You acknowledge we do not have to sell you additional franchises or consent to your purchase of existing franchises

F You acknowledge the only consideration we receive from you for granting you the license to use the System consists of the Franchise Fee, the Royalty and performance of your other promises under this Agreement.

G. You acknowledge you personally received our Franchise Offering Circular and its exhibits, including this Agreement (the "Offering Circular"), at or prior to your first personal meeting with our employee, development agent, agent, or representative and at least ten (10) business days before you signed this Agreement, and you signed a Receipt for the Offering Circular. You represent you carefully reviewed the Offering Circular and had enough time to consult with a lawyer, accountant, or other professional advisor, if you wanted, and you understand and agree to be bound by the terms, conditions, and obligations of this Agreement. You also represent you had full opportunity, with the help of a professional advisor if you used one, to ask us and our employees, development agents, agents, or representatives, all appropriate questions and we and our employees, development agents, agents or representatives answered all of your questions to your satisfaction, except questions on the subject of potential earnings, discussed in the following paragraph If you did not use a professional advisor, you represent you are satisfied relying on your own education, experience, and skill in evaluating the merits of a franchise offering.

H. You acknowledge no employee, agent, or representative of ours, or of our Affiliates, or our development agents, made any oral, written or visual representation or projection to you of actual or potential sales, earnings, or net or gross profits. You also acknowledge no employee, agent, or representative of ours, or of our Affiliates, or our development agents, has made any statements that are contrary to, or different from, the information in the Offering Circular, including but not limited to any statements about advertising, marketing, media support, media penetration, training, store density, store locations, support services and assistance, or the costs to establish or operate a SUBWAY® restaurant, except for any statements you wrote in at Paragraph 15.

I You represent you understand the risks of owning a business and specifically the risks of owning a SUBWAY® restaurant, and you are able to bear such risks. You acknowledge the success of the Restaurant will depend primarily on your own efforts and abilities and those of your employees, and you will have to work hard and use your best efforts to operate the Restaurant. You also acknowledge other factors beyond our or your control will affect the Restaurant's success, including but not limited to, competition, demographic patterns, consumer trends, interest rates, economic conditions, government policies, weather, local laws, rules and regulations, legal claims.

Inflation, labor costs, lease terms, market conditions, and other conditions which may be difficult to anticipate, assess, or even identify. You acknowledge that you are subject to all federal, state and local laws relating to the franchise business. You recognize some SUBWAY® restaurants have failed and more will fail in the future. You understand that your success will depend substantially on the location you choose. You acknowledge our approval of the location for the Restaurant does not guarantee the Restaurant's success at that location and the Restaurant may lose money or fail.

J. This Agreement does not grant you any territorial rights and we and our Affiliates have unlimited rights to compete with you and to license others to compete with you.

WE, YOU UNDERSTAND AND ACKNOWLEDGE THAT PARAGRAPH 14 OF THIS AGREEMENT AMENDS ANY EXISTING FRANCHISE AGREEMENTS YOU HAVE WITH US, to include the following provisions of this Agreement: Subparagraph 5.b. (regarding compliance with applicable laws and Operations Manual and royalty increase for non-compliance), Subparagraph 5.c. (regarding payment of taxes, costs and expenses, responsibility for employment practices and employees, insurance and indemnification), Subparagraph 5.f. (regarding reporting information electronically by personal computer based point-of-sale system, SUBWAY® Cash Card Program and other new technology initiatives, high speed broadband connection, real-time sales reporting, providing electronic audio and video data and acceptance of debit and credit cards), Subparagraph 5.g. (regarding record keeping), Subparagraph 5.h. (regarding fees for under-reporting), Subparagraph 5.i. (regarding payment of advertising contributions and increasing advertising percentage), Subparagraph 5.m. (regarding use of domain names), Paragraph 8 (regarding defaults and termination), Paragraph 10 (regarding dispute resolution), Subparagraph 11.f. (regarding interest and late fees), Subparagraph 11.m. (regarding no territorial rights and our unlimited right to compete), Subparagraph 11.n. (regarding compliance with anti-terrorism laws), Subparagraph 11.o. (authorization to use personal information and to conduct an investigative background search), Paragraph 13 (regarding governing law, merger clause and continuing effect), and Paragraph 17 (regarding limitation of liability).

WE, YOU UNDERSTAND AND ACKNOWLEDGE ALL DISPUTES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, EXCEPT FOR CERTAIN OF OUR CLAIMS DESCRIBED IN SUBPARAGRAPH 10.d., WILL BE ARBITRATED IN CONNECTICUT, UNDER PARAGRAPH 10 BELOW, IF NOT OTHERWISE RESOLVED.

AGREEMENT:

Acknowledging and agreeing to the above recitals, we and you (the "parties") further agree

1. FRANCHISE FEES. When you sign this Agreement, you will pay us the Franchise Fee checked below, which we will not refund except as we specifically provide for below. [Check one]:

_____ a **Standard Fee \$15,000** You will pay our standard fee for a first or additional franchise. We may refund one-half (1/2) of your Franchise Fee if you fail to achieve a passing score on the standardized test conducted during the training program as provided in Subparagraph 5.a.(2). If you sign this Agreement, including the Specific Location Rider, we may refund your Franchise Fee as provided in Subparagraph 5 a (1) of this Agreement as amended by the Specific Location Rider.

_____ b. **Reduced Fee \$7,500.** (i) You represent you are currently a SUBWAY® franchisee and all of your franchises are in substantial compliance as defined in the Operations Manual (referenced in Subparagraph 5.b) and there are no defaults under any Franchise Agreements; or (ii) You are purchasing your first SUBWAY® franchise for a non-traditional location we approved and you are a convenience store operator, a food service, management company, or other company that provides its own food services, (and you have 50 or more locations or you have a net worth of at least \$10 million as shown on an audited balance sheet), or you are a cooperative, foundation, a qualified non-profit charity, hospital, university, college, other school, or an Indian nation, or governmental agency or entity, or (iii) You are purchasing your first SUBWAY® franchise for a non-traditional location we approved to be located in a portion of an existing facility you own, lease or otherwise control under a management agreement and you are a franchisee in good standing of a nationally branded gasoline retailer. If you are purchasing a franchise for a non-traditional location under clause (ii) or clause (iii), we may disapprove the location within ninety (90) days, terminate this Agreement and refund the Franchise Fee. If any of these representations are not true (based upon the most recent store evaluation) when the Restaurant opens, you agree to pay an additional \$7,500.

_____ c **Extension Fee \$1,000.** You previously signed a Franchise Agreement and paid a Franchise Fee but did not sign a Sublease in the time permitted. The original Franchise Agreement is replaced by this Agreement. You agree to sign a Sublease within two (2) years with no right to any extension.

_____ d **Satellite Fee \$5,000.** You will operate the Restaurant as a limited restaurant supported by an existing Base Restaurant, as defined in the Satellite Rider. This Agreement for the Restaurant, including the

Satellite Rider, is the separate Franchise Agreement for the satellite restaurant. We will refund the Franchise Fee for the satellite restaurant as provided in Subparagraph 5 a(1) of this Agreement as amended by the Satellite Rider.

 e **Add On Fee** \$11,250. Individuals who are existing SUBWAY® franchisees represent their franchisees are in substantial compliance with the Operations Manual and there are no defaults under any Franchise Agreements. The Franchise Fee is the reduced Franchise Fee of \$7,500 plus an add-on fee of \$3,750 to add individuals who are not SUBWAY® franchisees. If the representations of the existing franchisees are not true when a lease is signed, you agree to pay an additional \$3,750. We may refund your add-on fee of \$3,750 if an individual is added to this Agreement and fails to achieve a passing score on our standardized test conducted during the training program as provided in Subparagraph 5.a (2).

 f **School Lunch** \$0. A school board, school district, municipality or institutional food service provider (or its nominee), or an individual existing franchisee is signing this Agreement to establish a restaurant in a school (grades K-12). This Agreement includes the School Lunch Rider.

 XX g **Transfer** \$0. Franchise No. 13913 owned by Douglas Petersen ("Seller") was transferred to you. (Seller may have paid a transfer fee.) The Seller's Franchise Agreement is replaced by this Agreement.

 h. **Amendment or Renewal** \$0. This Agreement replaces and/or renews the Franchise Agreement dated _____.

2. ROYALTY PAYMENTS. You will pay us weekly a Royalty equal to eight percent (8%) of the gross sales from the Restaurant and each sandwich restaurant you operate throughout the term of this Agreement, except as provided in Subparagraph 5 b. "Gross sales" means all sales or revenues, including catering and delivery, from your business exclusive of Sales Tax (as defined in Subparagraph 5 c).

3. PERMITTED ACCESS TO THE SYSTEM AND MARKS. We grant to you during the term of this Agreement

- a. Continued access to the System, including the loan of a copy of the Operations Manual.
- b. Continued access to information pertaining to new developments, improvements, techniques and processes in the System.
- c. A limited, non-exclusive license to use the Marks in connection with the operation of the Restaurant at one (1) location at a site we and you approved.

4. OUR OBLIGATIONS. We will provide you during the term of this Agreement:

- a. A training program for establishing and operating a restaurant using the System, at a location we choose. You will pay all transportation, lodging, and other expenses to attend the training program.
- b. A representative or development agent of ours to call on during our representative's or development agent's normal business hours for consultation concerning the operation of the Restaurant.
- c. A program of assistance, including periodic consultations with our representative or development agent in a location we choose; an electronic newsletter advising of new developments and techniques in the System, and access during their normal business hours to specified office personnel you may call for consultations concerning the operation of the Restaurant.

5. YOUR OBLIGATIONS. You agree to do the following

- a. In regards to the Sublease for the Restaurant:
 - (1) You will sign a Sublease or in limited circumstances a license for the Restaurant ("Sublease") within two (2) years after signing this Agreement. If you do not, this Agreement will automatically expire unless you i) request and are granted an extension, ii) pay an extension fee of \$1,000 US, and iii) sign our then current franchise agreement.
 - (2) Before opening, you must successfully complete the training program we provide under Subparagraph 4 a. You may be dismissed from the training program and this Agreement may be terminated if you fail to act in a professional manner at all times during the training program in accordance with our Business Code of Conduct. Your Franchise Fee will not be refunded. You may be required to achieve a passing score on our standardized test conducted

during the training program. If you fail to achieve a passing score, you will have the option to take one final retest. If you fail to achieve a passing score on the final retest or you opt not to take the final retest, we may dismiss you from the training program, cancel this Agreement and refund one-half (1/2) of your Franchise Fee. If more than one individual signs this Agreement, any one of the individuals who does not achieve a passing score on the test may be dismissed from the training program, removed from this Agreement and no portion of the Franchise Fee will be refunded. We will not reimburse you for your travel expenses.

- (3) The Restaurant will be at a location found by you and approved by us. We or an Affiliate we designate will lease the premises and sublet them to you. We or our designee will attempt to secure a fair rent for the premises but we cannot represent it will be the best available rent in your area. If you materially breach this Agreement or the lease, we or our designee may terminate the Sublease with you after giving the notice required in the Sublease.
- (4) After you sign the Sublease, you will construct, equip, and open the Restaurant to the specifications contained in the Operations Manual.

b. You will operate your business in compliance with all existing and future applicable laws and governmental regulations, including, but not limited to, those concerning labor, taxes, health, and safety. You will be required to pay all fees associated with such compliance. You agree to obtain and keep in force, at your expense, any permits, licenses, registrations, certifications or other consents required for leasing, constructing, or operating the Restaurant.

You will operate the Restaurant in accordance with our Operations Manual (the "Operations Manual"), which contains mandatory and suggested specifications, standards and operating procedures, which may be updated from time to time as a result of experience, or changes in the law or marketplace. You will make, at your sole expense, changes necessary to conform to the Operations Manual, including, but not limited to, repairing items not in good condition or not functioning properly, and upgrading and remodeling the Restaurant, including leasehold improvements, furniture, fixtures, equipment, and signs. You acknowledge these requirements are necessary and reasonable to preserve the identity, reputation, and goodwill we developed and the value of the franchise. You agree to make the repairs and the updates, and pay all reasonable, required costs within reasonable time periods we establish. You will adhere to quality control standards we prescribe in the Operations Manual or elsewhere with respect to the character or quality of the products you will sell or the services you will perform in association with the Marks. You must respond to and satisfy all customer complaints.

If you fail to operate the Restaurant in accordance with the Operations Manual, we may terminate this Agreement under Subparagraphs 8 a, 8 b, and 8.c, as applicable. In lieu of termination, we may impose a fee as a pre-estimate of losses for each day the Restaurant is not in compliance with the Operations Manual to compensate us for damages and for costs we incur to compel you to bring the Restaurant into compliance. If the Restaurant is Significantly Out of Compliance as defined in the Operations Manual for three (3) consecutive evaluations, your royalty rate for the Restaurant will increase to ten percent (10%) of gross sales and will remain at that rate until the Restaurant operates for three (3) consecutive months without being Significantly Out of Compliance. This increase in the royalty rate will cover our expenses to administer the Restaurant's compliance with the Operations Manual. The Operations Manual, as amended from time to time, is intended to further the purposes of this Agreement and is specifically incorporated into this Agreement. The Operations Manual constitutes a confidential trade secret and will remain our property. You may not, and you may not allow others to, reproduce or photocopy the Operations Manual, in whole or in part, without our written consent. You will not conduct any business or sell any products at the Restaurant other than the business and products we approve for the location.

c. You will be solely responsible for all costs of building and operating the Restaurant, including, but not limited to, sales or use tax, goods and services tax, gross receipts tax, excise tax or other similar tax ("Sales Tax"), fees, other taxes, customs, stamp duty, other duties, governmental registrations, construction costs and permits, equipment, furniture, fixtures, signs, advertising, insurance, food products, labor, utilities, and rent. We will not have any liability for these costs and you will reimburse us for any such costs that we must pay in connection with your operation of the Restaurant. You will pay any Sales Tax imposed by law on the Franchise Fee, Royalty, advertising fees, and any other amounts payable under this Agreement, whether assessed on you or on us. If we must make the payment to the taxing jurisdiction for any Sales Tax that is your responsibility under this Agreement, we will pass the amount on to you and you will reimburse us. You must register to collect and pay Sales Taxes before you open the Restaurant, and you must maintain these registrations during the term of this Agreement. You will recruit, hire, train, terminate, and supervise all Restaurant employees, set pay rates, and pay all wages and related amounts, including any employment benefits, unemployment insurance, withholding taxes or other sums, and we will not have any responsibility for these matters.

The insurance you must obtain and maintain includes, but is not limited to, statutory worker's compensation in the minimum amount required by law, comprehensive liability insurance, including products liability coverage, in the minimum amount of \$2,000,000 per occurrence/\$4,000,000 general aggregate, and business vehicle coverage, including hired and non-owned vehicle liability coverage, in the minimum amount of \$1,000,000. You must provide us with a copy of your Certificate of Insurance when you return your signed

Sublease or finalize your lease. You will keep all insurance policies in force for the mutual benefit of the parties. With the exception of worker's compensation and owned vehicle coverage, all insurance policies must name as additional insureds, us, our Affiliates, our Development Agent assigned to the Restaurant (the "Development Agent"), and our agents, representatives, shareholders, directors, officers and employees, and those of our Affiliates and the Development Agent (the "Additional Insureds"), with such coverage being primary coverage. Your insurance company must agree to give us at least twenty (20) days' prior written notice of termination, expiration, material modification, or cancellation of your policy, or cancellation of any of the Additional Insureds as an additional insured. You agree to defend, indemnify, and save harmless, the Additional Insureds, from and against all liability, injury, loss, cost and expense of any type (including lawyers' fees), and damages that arise in or in connection with your operation of the Restaurant, regardless of cause or any fault or negligence (including sole or concurrent negligence) by the Additional Insureds, which indemnification will not be relieved by any insurance you carry. You acknowledge we may modify or increase the insurance requirements during the term of this Agreement due to changes in experience, and you agree to comply with the new requirements. You acknowledge we may from time to time designate one or more approved insurance brokers or companies under a master insurance program we establish for franchisees generally, and you must purchase your coverage from one of the approved insurance brokers and/or their associated company.

d. You will not own or operate, or assist another person to own or operate, any other business anywhere, directly or indirectly, during the term of this Agreement, which is identical with or similar to the business reasonably contemplated by this Agreement, except as our authorized representative or as our duly licensed franchisee at a location we approve. You agree to pay us \$ 15,000 for each business you own or operate in violation of this Subparagraph, plus eight percent (8%) of its gross sales, as being a reasonable pre-estimate of the damages we will suffer. We may also seek to enjoin your activities under Subparagraph 10.d.

e. You will sign and deliver to us appropriate electronic funds transfer preauthorized draft forms (or forms serving the same purpose) for the Restaurant's checking account before you open the Restaurant. By signing these forms, you authorize us to withdraw money from the account on a timely basis to collect the appropriate Royalty, advertising contributions, interest, late fees, and other charges that you will owe, under this Agreement or under any other Franchise Agreement you have with us. In certain circumstances, you will also authorize us to withdraw money for fees that we paid to a third party on your behalf in connection with the Restaurant.

f. You will report your gross sales by telephone, facsimile, electronically, or by other means we permit, within two (2) days after the end of the business week (currently Tuesday). You will submit weekly summaries showing results of the Restaurant's operations by the following Saturday, in writing or in electronic form, as we permit, to locations we designate. You agree to use and maintain at the Restaurant a personal computer based point-of-sale system and software compatible with our requirements. You agree to install additions, substitutions, and upgrades to the hardware, software, and other items to maintain full operational efficiency and to keep pace with changing technology and updates to our requirements. You will record all sales and designated business information in your system in the manner we specify in the Operations Manual. You will report your information to us electronically as we specify and we may call up or poll your system to retrieve the information at any time. We may estimate gross sales if you fail to report on time. We may withdraw money from your checking account for Royalty and advertising contributions under the above Subparagraph, for the amounts then due based on reported or estimated sales. We will adjust charges based on estimated gross sales after we determine actual sales.

You will use and maintain an email address to send and receive electronic mail and attachments on the Internet. You may be required to invest in and implement new technology initiatives, which may include but will not be limited to the SUBWAY® Cash Card Program, LCD or plasma monitors, music, internet TV broadcast, WIFI, and Software Management applications, video surveillance, remote ordering through kiosks, PC's or hand held devices, E-learning, and software applications designed to better manage business functions and control costs. You will be responsible for all fees associated with these new technology initiatives. You may be required to use a supplier we designate for any goods and services associated with these initiatives. In the future, you will be required to: i) connect the Restaurant to the Internet through a high-speed broadband connection that meets our standards and specifications, (ii) report all transactions of the Restaurant to us electronically at the same time each transaction occurs, and (iii) provide us with all video, audio and electronic data collected from the Restaurant in the manner we specify. You may be required to accept credit or debit cards from customers. You may also be required to obtain a report of all credit and debit transactions and may have to provide us with a copy of this report.

g. You shall keep full, complete and accurate books and accounts with respect to the Restaurant, in accordance with generally accepted accounting principles and all requirements of law and in the form and manner prescribed below or as further prescribed by us from time to time. Such records shall be created exclusively for the Restaurant and shall be separate and apart from records kept for any other business in which you have an interest. You will allow our representatives and our development agent and our development agent's representatives to enter your business premises without prior notice during regular business hours to inspect,

audit, photocopy, and videotape your business operations and records, and to interview the Restaurant's employees and customers. Instead of or in addition to the foregoing, you will, upon our written request, make photocopies of all records we request and forward them to us or our representatives at such address as we designate in writing. We will reimburse you for the reasonable cost of photocopying documents that we request. You agree that we shall have the right to examine your books and records, and to perform such audits, inspections, tests and other analyses as we deem appropriate to verify gross sales. You will keep all of the following at the Restaurant for the current year and for the immediate past three (3) years: cash register tapes, control sheets, weekly inventory sheets, deposit slips, business and personal bank statements and canceled checks, sales and purchase records, business and personal tax returns, cash receipts journals, cash disbursements journals, payroll registers, general ledgers, semi-annual balance sheets, profit and loss statements, accounting records, and such other records and information as we may request from time to time. You also grant us permission to examine without prior notice to you, all records of any supplier relating to your purchases, and you hereby authorize such suppliers to release your purchase records to us at such times and places as we request.

h. You will pay us, if we or our representatives determine that you under-reported gross sales, all Royalty, advertising contributions and other charges due on the gross sales that were not reported, plus interest and the late fee as provided in Subparagraph 11 f. We may estimate your gross sales to determine whether you under-reported gross sales. If reported gross sales for any calendar year are less than ninety-eight percent (98%) of the actual gross sales for that period, you will reimburse us for all costs of the investigation, including salaries, outside accountant fees, outside attorneys' fees, travel, meals, and lodging. If reported gross sales for any calendar year are less than ninety-five percent (95%) of the actual gross sales for that period, you must also pay us a fee equal to one hundred percent (100%) of the amount of Royalty, advertising contributions and other charges due on the gross sales that were not reported. This fee covers our additional expenses for tracking and administering your under-reporting. You agree to pay for all costs of any audit that did not occur due to your failure to produce your books and records at the time of audit if we notified you in writing of the audit at least five (5) days before the scheduled date. If you fail to submit all of your information to be audited, we may estimate your sales and charge you.

i. You will pay us four and one-half percent (4 1/2%) of gross sales of the Restaurant on a weekly basis. This amount will be placed into an advertising fund managed jointly by us and elected franchisees for the benefit of franchisees in the System. Your advertising contributions will be placed into an advertising fund that (a) follows our Transparency Policy and fully discloses all material financial data about the fund to franchisees, (b) is prudent with expenses, and (c) works closely with us to produce and place advertising to enhance the SUBWAY® brand. At any time, franchisees may temporarily or permanently increase the advertising percentage for either the country or any market designated by the advertising fund by a two-thirds (2/3) vote on the basis of one (1) vote for each operating restaurant. We and our Affiliates or another entity that we designate may negotiate advertising contributions and programs with suppliers. We or our Affiliate may designate that these advertising contributions shall be forwarded to an advertising fund or be placed into a separate fund to be spent on advertising and related expenses for the benefit of franchisees at our or our Affiliate's complete unrestricted discretion. You acknowledge advertising contributions may not benefit franchisees in any area in proportion to the amounts they paid. Within six (6) months after you sign this Agreement, we may, in our sole discretion, require you to place \$10,000 into a marketing assistance fund to promote the SUBWAY® brand in your local area.

j. You will not place "For Sale" or similar signs at or in the general vicinity of the Restaurant or use any words in any advertising that identify the business offered for sale as a SUBWAY® restaurant.

k. You will make prompt payment of all charges you owe to us, our Affiliates, your vendors, and the landlord of the premises, in addition to Royalty and advertising contributions, and pay all Sales Tax, other taxes, and debts of the Restaurant as they become due.

l. You will use or display the Marks on materials and stationery used in connection with the Restaurant only as we permit and as provided in this Agreement or in the Operations Manual. You will display the following notice in a prominent place at the Restaurant: ***"The SUBWAY® trademarks are owned by Doctor's Associates Inc. and the independent franchised operator of this restaurant is a licensed user of such trademarks."***

m. You will operate and promote the Restaurant under the name SUBWAY® or other name we direct without prefix or suffix added to the name. You will not use the word "SUBWAY" as part of a corporate or other business name. You will not license or purchase vehicles, fixtures, products, supplies or equipment, or incur any obligations except in your individual, corporate or other business name. Any sign face bearing the name SUBWAY® will remain our property even though you may have paid a third party to make the sign face. You will not use the Marks in a manner that degrades, diminishes, or detracts from the goodwill associated with the Marks nor will you use the Marks in a manner which is scandalous, immoral, or satirical. You agree to promptly change the manner of such use if requested to do so by us. You will not establish a local domain name for a website using the word "SUBWAY" without our prior written authorization. The domain name must be registered under the name of DAI. We will require you to cancel your registration of the domain name if you fail to obtain our prior written authorization. At our request, you must remove any inappropriate information we deem not to be in the best

interest of the SUBWAY® franchise system. All present or future goodwill associated with the Marks belongs to us. You agree not to contest the validity or ownership of any of the Marks, or to assist any other person to do so. You agree you do not have and you will not acquire any ownership rights in the Marks, and you will not register or attempt to register any of the Marks. You agree to assign and transfer to us your rights in or registrations of the Marks that you have or may have. All references to the Marks in this Agreement include any additional or replacement Marks associated with the System that we authorize you to use.

n. You will always indicate your status as an independent franchised operator and franchisee to others and on any document or information released by you in connection with the Restaurant.

o. You acknowledge the System includes confidential and proprietary information, including, but not limited to customer lists, vendor lists, products, recipes, formulas, specifications, food preparation procedures, devices, techniques, plans, business methods and strategies, organizational structure, financial information, marketing and development plans and strategies, advertising programs, creative materials, media schedules, business forms, drawings, blueprints, reproductions, data, Franchise Agreements, business information related to franchisees, pricing policies, trademarks, published materials including the mark SUBWAY® and variations thereof, documents, letters or other paper work, trade secrets, know-how, information contained in the Operations Manual, and the Subway to Subway publication, and all information we or our Affiliates designate as confidential ("Confidential Information"). Confidential Information will remain our property or our Affiliate's property.

During the term of this Agreement you will not, without the express written consent of our board of directors, disclose, publish, or divulge any Confidential Information to any person, firm, corporation or other entity, or use any Confidential Information, directly or indirectly, for your own benefit or the benefit of any person, firm, corporation or other entity, other than for our benefit. You agree that you will only disclose such Confidential Information to those employees that need such Confidential Information in the course of their duties and shall only reveal or transmit the Confidential Information to them after advising them that the Confidential Information has been made available to you subject to this Agreement and they agree to be bound by the confidentiality terms of this Agreement. You acknowledge that if you violate this provision, substantial injury could result to us, our Affiliates, you and other SUBWAY® franchisees. If you violate this provision, you will be liable to us for our damages and we may also seek to enjoin your activities under Subparagraph 10.d. You will return all written Confidential Information, including all reproductions and copies thereof promptly upon our request. In the event that you are requested or required (by oral interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or similar process) to disclose any part of Confidential Information, you shall provide us with prompt written notice of any such request or requirement so that we may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Subparagraph. If in the absence of a protective order or other remedy or waiver, you are legally compelled to disclose Confidential Information to any tribunal or else stand liable for contempt or suffer other censure or penalty, you may, without liability hereunder, disclose to such tribunal only that portion of Confidential Information which your legal counsel advises that you are legally required to disclose.

Confidential Information shall not include, and the foregoing restrictions shall not apply to, any information or materials (a) which becomes generally known to the public other than as a result of a disclosure by you or your representative; (b) which was disclosed to you in written form, provided that you did not have reason to believe that the source of the information may have been bound by a nondisclosure agreement with other contractual, legal or fiduciary obligations of confidentiality to us or any other party with respect to such information or materials; (c) becomes available to you on a non-confidential basis from a source other than us, provided that such source is not bound by a nondisclosure agreement with other contractual, legal or fiduciary obligations of confidentiality to us or any other party with respect to such information or materials; or (d) which is independently developed by Recipient without the use of Confidential Information. The burden of proving that Confidential Information may be disclosed pursuant to the exception set forth in this subparagraph shall be on the Recipient.

6. RELOCATION OF THE RESTAURANT. You may relocate the Restaurant only with our prior written approval. You will have one (1) year to relocate the Restaurant and you will pay all expenses and liabilities to terminate the lease and move.

7. TERM OF AGREEMENT. If, under local law, this Agreement must be registered then it will not become effective until it is. The term of this Agreement is twenty (20) years from the date of this Agreement and will automatically renew for additional twenty (20) year periods unless either party chooses not to renew and sends written notice to the other at least six (6) months before the expiration of any twenty (20) year period. Upon renewal you have the option to either i) continue under the terms of this Agreement and the royalty rate will increase to ten percent (10%) with all other terms and conditions of this Agreement remaining the same, or ii) you may sign our then current Franchise Agreement which will replace this Agreement and which may contain terms or conditions

that differ from this Agreement, including financial terms, except for the royalty rate which will remain at eight percent (8%) This Agreement will be automatically renewed under option i) unless you send written notice of your intent to renew under option ii) at least six (6) months prior to expiration of this Agreement There will be no renewal fee

8. TERMINATION AND EXPIRATION PROVISIONS.

a. If we give you ten (10) days' written notice, we may, at our option and without prejudice to any of our other rights or remedies provided under this Agreement, terminate this Agreement if (i) you abandon the Restaurant, or (ii) you fail to pay any money you owe us, our Affiliates, the landlord of the premises, or any amounts we may become liable to pay because of your action or omission, or (iii) you are evicted from the Restaurant location for non-payment of rent or related charges The notice will specify the default and provide you ten (10) days to remedy the default from the date of delivery of the notice.

b. If we give you ninety (90) days' written notice, we may, at our option and without prejudice to any of our other rights or remedies provided under this Agreement, terminate this Agreement if you (i) do not substantially perform all of the terms and conditions of this Agreement not otherwise covered in Subparagraph 8.a., or (ii) you lose possession of the premises where the Restaurant is located, or (iii) you become insolvent, make an assignment for the benefit of creditors or seek bankruptcy relief, either reorganization or liquidation, in any court, legal or equitable, or (iv) you lose any permit or license which you need to operate the Restaurant, or (v) you fail to comply with your duties under this Agreement or the Operations Manual. The notice will specify the default and provide you sixty (60) days to remedy the default from the date of delivery of the notice. If you cure the default within sixty (60) days, the notice will be void.

c. We may, at our option and without prejudice to any of our other rights or remedies provided under this Agreement, terminate this Agreement without an opportunity to remedy the default unless prohibited by law if i) you fail to comply with all civil and criminal laws, ordinances, rules, regulations and orders of public authorities, or ii) intentionally under-report gross sales, falsify financial data or otherwise commit an act of fraud, or iii) you are convicted or plead guilty or "nolo contendere" to a felony, a crime of moral turpitude, an indictable offense, unfair or deceptive trade practices, or any other crime or offense that we believe is injurious or prejudicial to the System, the Marks or the goodwill associated therewith, or iv) if you use the Restaurant or the Restaurant location for any illegal or unauthorized use, or v) we determine that you are a suspected terrorist or otherwise associated directly or indirectly with terrorist activities, or vi) you are dismissed from the training program

After the second notice of a default under Subparagraph 8.a. or 8 b., any subsequent default in the following twelve (12) month period, will be good cause for a final termination without providing you an opportunity to remedy the default or even if you remedy the default.

d. Our waiver of any of your defaults will not constitute a waiver of any other default and will not prevent us from requiring you to strictly comply with this Agreement.

e. Upon termination or expiration of this Agreement, all of your rights under this Agreement will terminate You must change the appearance of the Restaurant, unless we instruct you otherwise, so it will no longer be identified as a SUBWAY® restaurant, and you must stop using the System, including the Marks, signs, colors, structures, personal computer based point-of-sale system software developed for SUBWAY® restaurants, printed goods and forms of advertising indicative of our sandwich business and return the Operations Manual to us. You are required to cancel any permits, licenses, registrations, certifications or other consents required for leasing, constructing, or operating the Restaurant If you fail to do so within a reasonable time, we are authorized to cancel them for you If you breach this provision, you will pay us \$250 per day for each day you are in default, as being a reasonable pre-estimate of the damages we will suffer. We may also seek to enjoin your activities under Subparagraph 10.d.

f. If any of the provisions above which permit us to terminate the franchise violate your state law, if it applies, such state law relating to termination will prevail over the offending provisions

g. For three (3) years after the termination, expiration or transfer of this Agreement, you will not directly or indirectly engage in, or assist another to engage in, any sandwich business within three (3) miles of any location where a SUBWAY® restaurant operates or operated in the prior year. You agree to pay us \$15,000 for each sandwich business location you are associated with in the restricted area in violation of this Subparagraph, plus eight percent (8%) of the gross sales of such location during the three (3) year period, as being a reasonable pre-estimate of the damages we will suffer We may also seek to enjoin your activities under Subparagraph 10 d Nothing in this Subparagraph or any other provision of this Agreement grants you any territorial or other exclusive rights.

h Upon termination, expiration or transfer of this Agreement, you agree to remain bound by the provisions of confidentiality and non-disclosure under Subparagraph 5 o of this Agreement. You acknowledge that all Confidential Information will remain our property or our Affiliate's property. You will not at any time after termination, expiration or transfer of this Agreement, without our prior written consent, disclose to any unauthorized person or entity, or use for the benefit of any unauthorized person or entity, any Confidential Information.

i Upon termination or expiration of this Agreement, all telephone listings, telephone numbers, Internet addresses and domain names used by the public to communicate with the Restaurant will automatically become our property if permitted by state law. In any event, you agree not to use any telephone numbers, Internet addresses or domain names associated with the Restaurant after the termination or expiration of this Agreement.

j We have the right to repurchase the Restaurant within thirty (30) days of termination or expiration of this Agreement at fair market value minus any money you owe us, our affiliates or the landlord. If we do not purchase the Restaurant, you are responsible for obtaining a termination and mutual release of the lease from the landlord of the premises on which the Restaurant is located. You are responsible for all costs associated with obtaining the termination and mutual release, including but not limited to any amount owed to the landlord.

9. TRANSFER AND ASSIGNMENT OF THE RESTAURANT.

a You may only transfer the Restaurant with this Agreement and only with our prior written approval, as provided in this Paragraph 9. You may transfer the Restaurant and this Agreement to a natural person or persons (not a corporation), provided: (1) you first offer, in writing, to sell the Restaurant to us on the same terms and conditions offered by a bona fide third party purchaser, we fail to accept the offer within thirty (30) days, and we approve your contract with the purchaser, (2) each purchaser has a satisfactory credit rating, and is of good moral character, (3) each purchaser received a passing score on our standardized test (if not already a SUBWAY® franchisee) and attended and successfully completed our training program or agrees to attend our first available training program promptly after the sale (and then must successfully complete the training program or will be in default under the Franchise Agreement); (4) each purchaser received the required disclosure documents in accordance with our policies and federal and state laws, rules, and regulations, and signs the then current form of Franchise Agreement which will amend and replace this Agreement and may contain terms that differ from this Agreement, including financial terms, and assumes the Sublease for the Restaurant; (5) you pay in full all money you owe us, our Affiliates, for all your SUBWAY® restaurants and you are not otherwise in default under this Agreement; (6) you pay us \$7,500 plus any applicable Sales Tax for our legal, accounting, training, and other expenses we incur in connection with the transfer, (7) you deliver a general release in favor of us, the Development Agent and our Affiliates, and agents, representatives, shareholders, partners, directors, officers, and employees of ours and of the Development Agent and our Affiliates signed by you and each purchaser, (8) you transfer the Operations Manual for the Restaurant to the purchaser on the date of transfer; and (9) at or prior to the time of the transfer you bring the Restaurant into full compliance with our then current standards set forth in the Operations Manual. All transfer documents will be in English in a form satisfactory to us. During the transfer process, DAI may share your personal information with its affiliates or prospective franchisees in accordance with the procedures set forth in the DAI Privacy Policy. If you do not want your information shared during the transfer process, you must opt out either prior to the completion of the store transfer or at the time of the transfer. All opt out requests should be directed to the Privacy Officer, as set forth in the policy.

b. You may assign your rights under this Agreement to operate the Restaurant (but not this Agreement) to a corporation (or similar entity) provided: (1) the corporation is newly organized and its activities are confined exclusively to operating the Restaurant; (2) you are, and remain at all times, the owner of the controlling voting interest and majority ownership interest (more than 50%) of the corporation, (3) each individual who signs this Agreement owns no less than twenty-five percent (25%) of the corporation, unless we require otherwise; (4) the corporation delivers to us a written assumption of your obligations under this Agreement, (5) all shareholders of the corporation deliver to us a written guarantee of the full and prompt payment and performance by the corporation of all its obligations to us under the assignment; (6) you acknowledge to us in writing that you are not relieved of any personal liability; and (7) you deliver a general release described in Subparagraph 9.a., signed by you, the corporation, and each shareholder of the corporation. You will also remain personally liable under the Sublease. You acknowledge that any judgment awarded in our favor, pursuant to this Agreement, may be enforced against you, the corporation and its successors or assigns.

c. Your rights under this Agreement may pass to your next of kin or legatee upon your death. Each such transferee must receive a passing score on our standardized test (if not already a SUBWAY® franchisee), deliver a written assumption to us, and agree in writing to attend our next training session. Each transferee must then successfully complete our training program or will be in default under this Agreement. The transferees will also assume the Sublease in writing.

d. We may transfer and assign this Agreement without your consent, and this Agreement will inure to the benefit of our successors and assigns.

10. ARBITRATION OF DISPUTES.

a. Any dispute, controversy, or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration. The arbitration shall be administered by an arbitration agency, such as the American Arbitration Association ("AAA") or the American Dispute Resolution Center, in accordance with its administrative rules including, as applicable, the Commercial Rules of the AAA and under the Expedited Procedures of such rules or under the Optional Rules For Emergency Measures of Protection of the AAA. Judgment rendered by the Arbitrator may be entered in any court having jurisdiction thereof. The costs of the arbitration will be borne equally by the parties. The parties agree that Bridgeport, Connecticut shall be the site for all hearings held under this Paragraph 10, and that such hearings shall be before a single arbitrator, not a panel, and neither party shall pursue class claims and/or consolidate the arbitration with any other proceedings to which we are a party. The parties will honor validly served subpoenas, warrants and court orders.

b. If you breach the terms of your Sublease, the Sublessor, whether us or our designee, may exercise its rights under the Sublease, including to evict you from the franchised location. Any action brought by the Sublessor to enforce the Sublease, including actions brought pursuant to the cross-default clause in Paragraph 6 of the Sublease (which provides that a breach of the Franchise Agreement is a breach of the Sublease) is not to be construed as an arbitrable dispute.

The parties agree that you may seek a stay of any eviction brought under the cross-default clause in Paragraph 6 of the Sublease by filing a demand for arbitration in accordance with Subparagraph 10 a. within thirty (30) days of the Sublessor's commencement of the eviction. The stay may be lifted upon conclusion of the arbitration. You may not seek a stay of eviction for any actions involving non-payment of rent or in a case where an arbitration award under the Franchise Agreement has been issued.

c. You may only seek damages or any remedy under law or equity for any arbitrable claim against us or our successors or assigns. You agree that our Affiliates, shareholders, directors, officers, employees, agents and representatives, and their affiliates, shall not be liable nor named as a party in any arbitration or litigation proceeding commenced by you where the claim arises out of or relates to this Agreement. You further agree that the foregoing parties are intended beneficiaries of the arbitration clause, and that all claims against them that arise out of or relate to this Agreement must be resolved with us through arbitration. If you name a party in any arbitration or litigation proceeding in violation of this Subparagraph 10 c., you will reimburse us for reasonable costs incurred, including but not limited to, arbitration fees, court costs, lawyers' fees, management preparation time, witness fees, and travel expenses incurred by us or the party.

d. Notwithstanding the arbitration clause in Subparagraph 10 a., we may bring an action for injunctive relief in any court having jurisdiction to enforce our trademark or proprietary rights, the covenants not to compete, or the restriction on disclosure of Confidential Information in order to avoid irreparable harm to us, our affiliates and the franchise system as a whole.

e. Any disputes concerning the enforceability or scope of the arbitration clause shall be resolved pursuant to the Federal Arbitration Act, 9 U.S.C. § et seq. ("FAA"), and the parties agree that the FAA preempts any state law restrictions (including the site of the arbitration) on the enforcement of the arbitration clause in this Agreement. If, prior to an Arbitrator's final decision, either we or you commence an action in any court of a claim that arises out of or relates to this Agreement (except for the purpose of enforcing the arbitration clause or as otherwise permitted by this Agreement), that party will be responsible for the other party's expenses of enforcing the arbitration clause, including court costs, arbitration filing fees and other costs and attorney's fees.

f. We and our Affiliates, and you and your Affiliates, will not withhold any money due to the other party and its Affiliates, under this Agreement or any other agreement. A party or its Affiliate that withholds money in violation of this provision will reimburse the party or its Affiliate whose money is withheld for the reasonable costs to collect the withheld money, notwithstanding the provisions of Subparagraph 10.a. These costs include, but are not limited to, mediation and arbitration fees, court costs, lawyers' fees, management preparation time, witness fees, and travel expenses incurred by the party or its Affiliate or an advertising fund, or its agents or representatives.

g. If a party (i) commences action in any court, except to compel arbitration, or except as specifically permitted under this Agreement, prior to an arbitrator's final decision, or (ii) commences any arbitration in any forum except where permitted under this Paragraph 10, or (iii) when permitted to commence a litigation proceeding, commences any litigation proceeding in any forum except where permitted under this Paragraph 10, then that party is in default of this Agreement. The defaulting party must commence arbitration (or a litigation proceeding, if

permitted under this Paragraph 10), in a permitted forum prior to any award or final judgment. The defaulting party will be responsible for all expenses incurred by the other party, including lawyers' fees. Subject to federal or state law, if a party defaults under any other provision of this Paragraph 10, or under any provision of Paragraph 17 or Paragraph 18, including, but not limited to, making a claim for special, incidental, consequential, punitive, or multiple damages, or damages in excess of the amount permitted under this Agreement, or you name a person or entity in any arbitration or legal proceeding other than us, the defaulting party must correct its claim. The defaulting party will be responsible for all expenses incurred by the other party, or the improperly named persons or entities, including lawyers' fees, and will be liable for abuse of process.

11. OBLIGATIONS OF THE PARTIES. The parties also agree as follows

a. You are, and will at all times be identified as, a natural person and an independent contractor. You are not our agent, partner, or employee. This Agreement does not create a partnership, joint venture, agency, or fiduciary relationship.

b. All or any part of your rights and privileges under this Agreement will return to us if for any reason you abandon, surrender, or suffer revocation of your rights and privileges.

c. If, for any reason, any court, agency, or tribunal with valid jurisdiction in a proceeding to which we are a party, decides in a final, non-appealable ruling, that a portion of this Agreement is contrary to, or in conflict with any applicable present or future law, rule, or regulation, after giving such portion the broadest legal interpretation possible, then that portion will be invalid and severable, and the remainder of this Agreement will not be affected and will continue to be given full force and effect. Any invalid portion will be deemed not to be a part of this Agreement as of the date the ruling becomes final if you are a party to the proceedings, or upon your receipt of notice of nonenforcement from us. If a court, agency, or tribunal decides a covenant not to compete is too broad as to scope, time, or geographic area, the parties authorize the court, agency or tribunal to modify the covenant to the extent necessary to make it enforceable.

d. No previous course of dealing or usage in the trade not specifically set forth in this Agreement will be admissible to explain, modify, or contradict this Agreement.

e. The parties will give any notice required under this Agreement in writing, and will send it by certified mail, registered mail or by a mail service which uses a tracking system, such as Airborne Express or Federal Express. We will address notices to you at the Restaurant or at your home until you designate a different address by written notice to us. You must notify us of any address changes, including changes to your electronic mail address. You will address notices to us to Doctor's Associates Inc., 325 Bic Drive, Milford, CT 06460-3059, Attention Legal Department. Any notice will be deemed given at the date and time it is received, or refused, or delivery is made impossible by the intended recipient.

f. If your payment is more than one (1) week late you will pay a late fee equal to ten percent (10%) on any Royalty, advertising contributions, or other charges you will owe us under this Agreement. Also, you will pay interest on all your past-due accounts at up to eighteen percent (18%), but the late fee and interest will not be greater than the maximum rate allowed by law in the state in which our principal office is located or the Restaurant is located, whichever is higher.

g. You must immediately notify us of any infringement of or challenge to your use of any of the Marks, or claim by any person of any rights in any of the Marks. We will indemnify you for all damages for which you are held liable in any proceeding arising out of the use of any of the Marks in compliance with this Agreement, provided you notify us promptly, cooperate in the defense of the claim, and allow us to control the defense of the action. If a third party challenges any of the Marks claiming infringement of alleged prior or superior rights in the Mark, we will have the option and right to modify or discontinue use of the Mark and adopt substitute Marks in your geographical business areas and in other areas we select. Our liability to you under such circumstances will be limited to your cost to replace signs and advertising materials. You acknowledge and agree we have the exclusive right to pursue any trademark infringement claims against third parties.

h. If we terminate this Agreement and we must purchase the Restaurant's equipment, leasehold improvements, or both, under any applicable state law, rule, regulation, or court decision, the purchase price will be your original cost, less depreciation and amortization, based on a five (5) year life under the straight-line method.

i. If the landlord terminates the lease for the Restaurant and an arbitrator or court determines you did not breach the Sublease and it was our fault or our Affiliate's fault the landlord terminated the lease, our obligation to you will be limited to the original cost of your leasehold improvements, less depreciation based on a five (5) year life under the straight-line method. We will pay you when you reopen the Restaurant in a new location. If the

arbitrator or court determines you breached the Sublease or it was not our fault or our Affiliate's fault the landlord terminated the lease, we and our Affiliate will have no obligation to you for termination of the lease

j. If you believe that we are in default under this Agreement, you must give us written notice by certified mail, registered mail or by a mail service which uses a tracking system, such as Airborne Express or Federal Express, within ninety (90) days of the start of the default clearly stating each act or omission constituting the default. If we do not cure the default to your satisfaction within sixty (60) days after we receive your notice, you may give us notice that an arbitrable dispute exists. The parties will work diligently to attempt to resolve the arbitrable dispute in accordance with Paragraph 10

k. You will pay us Sales Tax or other tax assessed on all payments you make to us that we must collect from you or pay ourselves to the taxing authority.

l. You will pay us any applicable Sales Tax or other tax on behalf of the local taxing authority at the same time and in the same manner you pay for the taxable goods or services, whether or not the requirement is specifically stated in this Agreement

m. You understand and acknowledge this Agreement does not grant you any territorial rights and there are no radius restrictions or minimum population requirements which limit where we can license or open another SUBWAY® restaurant, unless provided under applicable state law. We and our Affiliates have unlimited rights to compete with you and to license others to compete with you. You understand and acknowledge we and our Affiliates retain the exclusive unrestricted right to produce, distribute, and sell food products, beverages, and other products, under the SUBWAY® mark or any other mark, directly and indirectly, through employees, representatives, licensees, assigns, agents, and others, at wholesale, retail, and otherwise, at any location, without restriction by any right you may have, and without regard to the location of any SUBWAY® restaurant, and these other stores or methods of distribution may compete with the Restaurant and may adversely affect your sales. You do not have any right to exclude, control, or impose conditions on the location or development of any SUBWAY® restaurant, other restaurant, store or other method of distribution, under the SUBWAY® mark or any other mark

n. You acknowledge it is our intent to comply with all anti-terrorism laws enacted by the US Government. You further acknowledge that we may not carry on business with anyone officially recognized by the US Government as a suspected terrorist or anyone otherwise associated directly or indirectly with terrorist activities. The parties agree that if, at any time during the term of this Agreement, it is determined that you are a suspected terrorist or otherwise associated directly or indirectly with terrorist activities, that this Agreement may be terminated immediately. You acknowledge that you are not now, and have never been a suspected terrorist or otherwise associated directly or indirectly with terrorist activity, including but not limited to, the contribution of funds to a terrorist organization. You further acknowledge that it is not your intent or purpose to purchase a SUBWAY® franchise to fund or participate in terrorist activities.

o. You authorize us, at any time during the term of this agreement, to conduct credit checks or investigative background search on you which may reveal information about your business experience, educational background, criminal record, civil judgments, property ownership, liens, association with other individuals, creditworthiness and job performance.

12. TERMS, REFERENCES AND HEADINGS. All terms and words in this Agreement will be deemed to include the correct number, singular or plural, and the correct gender, masculine, feminine, or neuter, as the context or sense of this Agreement may require. Each individual signing this Agreement as the franchisee will be jointly and severally liable. References to "you" will include all such individuals collectively and individually. References to dollars (\$) in this Agreement refer to the lawful money of the United States of America. The paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation

13. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the substantive laws of the State of Connecticut, without reference to its conflicts of law, except as may otherwise be provided in this Agreement. The parties agree any franchise law or business opportunity law of the State of Connecticut, now in effect, or adopted or amended after the date of this Agreement, will not apply to franchises located outside of Connecticut. This Agreement, including the Recitals and all exhibits, contains the entire understanding of the parties and supersedes any prior written or oral understandings or agreements of the parties relating to the subject matter of this Agreement. The parties may not amend this Agreement orally, but only by a written agreement, except we may amend the Operations Manual from time to time as provided in this Agreement. The provisions of this Agreement which by their terms are intended to survive the termination or expiration of this Agreement, including, but not limited to, Subparagraphs 5.c., 5.h., 5.k., 8.d., 8.e., 8.g., 8.h., 11.b., 11.h., 11.j., 11.m., 11.n. and 11.o., and Paragraphs 10, 13, 14, 15, 16, 17, and 19, will survive the termination or expiration of this Agreement.

Integration

14. AMENDMENT OF PRIOR AGREEMENTS. The parties want to encourage advertising cooperation and franchisee compliance, provide for amicable, timely, and cost effective resolution of Disputes with limitations on liability, and clarify certain provisions of existing Franchise Agreements. To achieve these goals, this Agreement has revised provisions regarding payment of taxes, costs and expenses, responsibility for employment practices and employees, insurance, indemnification, increasing advertising contributions, reporting information electronically by personal computer based point-of-sale system, defaults and termination, interest and late fees, dispute resolution, no territorial rights and our unlimited right to compete, governing law, merger clause, continuing effect, and limitation of liability. You agree to accept the provisions set forth in Subparagraph 5 b, Subparagraph 5 c, Subparagraph 5 f, Subparagraph 5 g, Subparagraph 5 h, Subparagraph 5 i, Subparagraph 5 m, Paragraph 8, Paragraph 10, Subparagraph 11 f, Subparagraph 11 m, Subparagraph 11 n, Subparagraph 11 o, Paragraph 13, and Paragraph 17 in this Agreement, for this Agreement and to the amendment of all your other existing Franchise Agreements with us to include these provisions (if the existing Franchise Agreements do not already include these provisions) **EACH OF YOU SIGNING THIS AGREEMENT AS FRANCHISEE ACKNOWLEDGES AND UNDERSTANDS THAT THIS PARAGRAPH 14 AMENDS ALL YOUR EXISTING FRANCHISE AGREEMENTS WITH US, AND ANY SUCH AMENDMENT WILL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.** This Paragraph 14 amends any existing Franchise Agreement you have if every individual who signed the existing Franchise Agreement as franchisee signs this Agreement or another Franchise Agreement containing the provisions of this Paragraph 14

15. NO OTHER REPRESENTATIONS. You acknowledge no employee, agent, or representative of ours, or our Affiliates, or our development agents, has made any representations to you, and you have not relied on any representations, except for the representations contained in this Agreement, the Offering Circular, and our advertising materials, and except those you have written in below

16. NO PRIOR CLAIMS AND GENERAL RELEASE. You represent that as of the date of this Agreement, you have no claims of any type against us, our Affiliates, or the Development Agent, or our agents, representatives, shareholders, directors, officers, and employees, or those of our Affiliates and the Development Agent, except those you have written in below

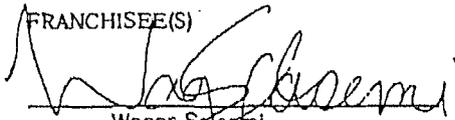
You hereby release each of these individuals and entities from all claims other than those you listed above. You acknowledge and understand that any list of claims and the general release will include any alleged breaches of franchise or other laws, and any alleged breach of agreement, relating not only to this Agreement, but also to any agreements or dealings you may have or had at any time with us or any of the above listed individuals or entities

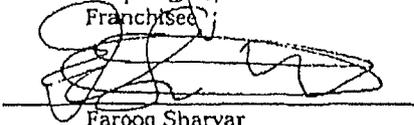
17. LIMITATIONS ON DAMAGES. EACH PARTY HEREBY WAIVES, WITHOUT LIMITATION, ANY RIGHT IT MIGHT OTHERWISE HAVE TO ASSERT A CLAIM FOR AND/OR TO RECOVER LOST PROFITS AND OTHER FORMS OF CONSEQUENTIAL, INCIDENTAL, CONTINGENT, PUNITIVE AND EXEMPLARY DAMAGES FROM THE OTHER EXCEPT AS PROVIDED HEREIN. EACH PARTY'S LIABILITY SHALL BE LIMITED TO ACTUAL COMPENSATORY DAMAGES. ACTUAL COMPENSATORY DAMAGES SHALL BE THE GREATER OF (1) \$100,000.00 OR (2) AT YOUR SOLE OPTION, ALL AMOUNTS PAID TO US FOR FRANCHISE FEES AND ROYALTIES FOR THIS AGREEMENT FOR UP TO THREE YEARS PRECEDING THE DATE OF ANY AWARD HEREIN. IF YOU CHOOSE OPTION (2), WE WILL ALSO REPURCHASE YOUR EQUIPMENT, PURCHASED FROM OR THROUGH US, AT DEPRECIATED VALUE USING THE FIVE YEAR, STRAIGHT LINE METHOD OF CALCULATION. EACH PARTY ACKNOWLEDGES THAT IT HAS HAD A FULL OPPORTUNITY TO CONSULT WITH COUNSEL CONCERNING THIS WAIVER, AND THAT THIS WAIVER IS INFORMED, VOLUNTARY, INTENTIONAL, AND NOT THE RESULT OF UNEQUAL BARGAINING POWER.

18. WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES, WITHOUT LIMITATION, ANY RIGHT IT MIGHT OTHERWISE HAVE TO TRIAL BY JURY ON ANY AND ALL CLAIMS ASSERTED AGAINST THE OTHER. THIS WAIVER IS EFFECTIVE EVEN IF A COURT OF COMPETENT JURISDICTION DECIDES THAT THE ARBITRATION PROVISION IN PARAGRAPH 10 IS UNENFORCEABLE. EACH PARTY ACKNOWLEDGES THAT IT HAS HAD A FULL OPPORTUNITY TO CONSULT WITH COUNSEL CONCERNING THIS WAIVER, AND THAT THIS WAIVER IS INFORMED, VOLUNTARY, INTENTIONAL, AND NOT THE RESULT OF UNEQUAL BARGAINING POWER. EACH PARTY AGREES THAT ANY SUCH TRIAL SHALL TAKE PLACE IN A COURT OF COMPETENT JURISDICTION IN CONNECTICUT.

19. CONSENT TO TERMS OF AGREEMENT. You acknowledge you read and understand this Agreement, including any addenda and exhibits, and you agree to be bound by all of its terms and conditions.

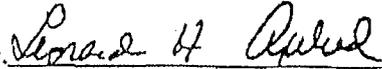
IN WITNESS WHEREOF, the parties have executed this Agreement, as of the date first written above.

FRANCHISEE(S)


Waqas Saleemi
Franchisee


Farooq Sharyar
Franchisee

DOCTOR'S ASSOCIATES INC

By: 

Duly Authorized

Title: _____

FRANCHISE AGREEMENT ADDENDUM

This Addendum dated June 21, 2004 amends and supplements the Franchise Agreement of the same date between Doctor's Associates Inc., a Florida Corporation with principal office in Fort Lauderdale, Florida ("we" or "us"), and Waqas Saleemi and Farooq Sharyar ("you"). The Franchise Agreement, as amended by this Addendum, will be called this "Agreement".

AGREEMENT.

The parties amend and supplement the Franchise Agreement as follows

I. Subparagraph 5.i. is amended by deleting the last sentence in its entirety which states: "Within six (6) months after you sign this Agreement, we may, in our sole discretion, require you to place \$10,000 into a marketing assistance fund to promote the SUBWAY® brand in your local area."

I. Add the following as new Subparagraph 5 p :

1. Within six (6) months after opening the Restaurant, we may, in our sole discretion, require you to place \$10,000 into a marketing assistance fund to promote SUBWAY® restaurants in your local area. The monies will be spent in accordance with a marketing plan developed by you and us.

III. The Franchise Agreement, as amended and supplemented by this Addendum, contains the entire understanding of the parties. The parties can amend the Franchise Agreement further only in a signed writing. The provisions of the Franchise Agreement, as amended and supplemented by this Addendum, are ratified and affirmed.

IV. You acknowledge you read and understand this Addendum and the Franchise Agreement and consent to be bound by all the terms and conditions of the Franchise Agreement, as amended and supplemented by this Addendum.

IN WITNESS WHEREOF, the parties have executed this Addendum, as of the date first written above.

FRANCHISEE(S).

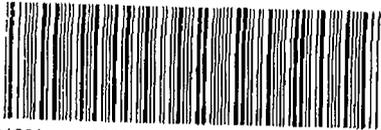
Waqas Saleemi
Waqas Saleemi
Franchisee

Farooq Sharyar
Farooq Sharyar
Franchisee

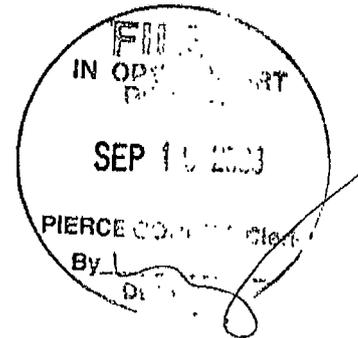
DOCTOR'S ASSOCIATES INC.

By: [Signature]
Duly Authorized

Title _____



08-2-11956-0 30582538 OR 09-24-08



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON COUNTY OF PIERCE

WAQAS SALEEMI, a single man, and FAROOQ SHARYAR, a single man

Plaintiffs

v.

DOCTOR'S ASSOCIATES, INC., a Florida Corporation,

Defendant

NO. 08-2-11956-0

ORDER ON MOTION TO DETERMINE ARBITRABILITY

THIS MATTER having come on regularly before the above entitled Court upon the motion of the Plaintiffs to determine arbitrability, the Court having read the records and files herein and having heard argument of counsel, it is hereby

ORDERED, ADJUDGED and DECREED that those paragraphs in the Franchise Agreements between Plaintiffs and Defendant that require arbitration in the state of Connecticut are hereby declared unconscionable and unenforceable. It is further,

~~ORDERED, ADJUDGED and DECREED that a restraining order pursuant to RCW 7.04A restraining Defendant from proceeding with arbitration in Connecticut be and is hereby entered.~~

It is further

ORDERED, ADJUDGED and DECREED that the cash bond posted by Plaintiffs be and is

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 hereby discharged. It is further

2 ORDERED, ADJUDGED and DECREED that the disputes
3 between the parties shall be Arbitrated in Washington
4 under Washington law, with no limitation on Remedies

5 _____
6 _____
7 _____

8
9 DONE IN OPEN COURT this 19th day of September, 2008

10 [Signature]
11 _____
12 JUDGE KITTY-ANN VAN DOORNINCK

13 Presented by:

14 [Signature]
15 ~~DOUGLAS SULKOSKY WSBA# 7855~~
16 Attorney for Plaintiffs. #34673

17 Approved as to form,
18 notice of presentment waived:
19 [Signature]
20 GARY BRANFELD, WSBA# 6537
21 Attorney for Defendant

